United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-6161

United States Court of Appeals

For the Second Circuit.

SECURITIES and EXCHANGE COMMISSION,
Plaintiff-Appellee,

against

GALAXY FOODS, INC., ARTHUR LIEBERMAN a/k/a ARTY LEE, RALPH AVNI, CHARLES HOROWITZ, BRUCE KATZ, STEVEN ROTH, MARK GLAZER, IRWIN DONALD KIRSCHENBLATT a/k/a DONALD KIRSCH, GEORGE PADILLA, ARTHUR SHEVACK,
Defendants,

IRWIN DONALD KIRSCHENBLATT, a/k/a DONALD KIRSCH and ARTHUR SHEVACK,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

Volume I—Pages 1a to 360.

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UNITED STATES COURT OF APPEALS
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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

-against-

GALAXY FOODS, INC., ARTHUR LIEBERMAN a/k/a Arty Lee, RALPH AVNI, CHARLES HOROWITZ, BRUCE KATZ, STEVEN ROTH, MARK GLAZER, IRWIN DONALD KIRSCHENBLATT, a/k/a Donald Kirsch, GEORGE PADILLA, ARTHUR SHEVACK,

Defendants,

IRWIN DONALD KIRSCHENBLATT, a/k/a Donald Kirsch and ARTHUR SHEVACK,

Defendants-Appellants.

- -X

RELEVANT DOCKET ENTRIES.

Date	Proceedings
11-26=73	Complaint filed. Summons issued.
11-27-73	By NEAHER, J. - Order to show cause dtd 11-27-73 for an order to appoint an equity receiver, etc. ret 12-7-73 at 2 P.M. with T.R.O., without proof of service, filed.
12/14/73	ANSWER of defts KIRSCH and SHEVACK filed.
1-10-74	By NEAHER, J. - Order dtd 1-9-74 granting preliminary filed.
1-17-74	Notice of Motion to Dismiss the Complaint filed.

RELEVANT DOCKET ENTRIES

Date	Proceedings
1-23-74	Notice of motion ret 2-1-74 for an order dismissing the complaint
2-13=74	By NEAHER, J. - Order & memorandum dtd. 2-12-74 denying defts' several motions to dismiss for lack of jurisdiction & for failure to state claim etc. filed. Defts. who have not so answered complaint ordered to do so within 10 days after receipt of memo & order. Action to be calendared for plenary trial at earliest practicable date. (Copies sent to parties)
3-19-74	By NEAHER, J. - Order of preliminary injunction by consent dtd 3-15-74 as against defts Shevack & Kirsch filed.
10-15-74	Stenographer's transcript of Oct. 10, 1974 filed.
12-2-74	Pltff's findings of fact and conclusions of law filed.
12-4-74	Defts Shevack & Kirschenblatt's findings of fact filed.
7-27-76	By NEAHER, J. Memorandum of decision dtd 7-26-76 permanently enjoining the defts from violating the registration or anti-fraud provisions of the securities law with respect to the sales of any securities in the form of franchise of distributorship interests filed. P/C
9-13-76	By NEAHER, J. FINAL JUDGMENT OF PERMANENT INJUNCTION AGAINST defts ARTHUR SHEVACK and DONALD KIRSCH dtd 9-13-76. Ordered that deft Kirsch shall disgorge and pay to the Registry of this Court the sum of $3,700, and deft Shevack shall disgorge and pay to the Registry of this Court the sum of $8,250 plus 6% interest on an annual compounded basis filed.
10-8-76	Notice of appeal from the Final Judgment entered against defts Irwin D. Kirschenblatt and Arthur Shevack filed. Copy sent to C of A.
10-14-76	Stenographer's transcripts dtd 9-30-74; 10-2-74; 10-1-74; 10-3-74; 10-7-74; 10-8-74; and 10-9-74 filed.

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- GALAXY FOODS, INC. ARTHUR LIEBERMAN A/K/A ARTY LEE RALPH AVNI CHARLES HOROWITZ BRUCE KATZ STEVEN ROTH MARK GLAZER IRWIN DONALD KIRSCHENBLATT A/K/A DONALD KIRSCH GEORGE PADILLA ARTHUR SHEVACK Defendants.	73 Civil Action File No. 1742 (ERN) COMPLAINT FOR INJUNCTION, APPOINTMENT OF A RECEIVER, AN ACCOUNTING, AND DISGORGEMENT OF BENEFITS.

The plaintiff Securities and Exchange Commission ("Commission") for its complaint alleges that:

1. Defendants GALAXY FOODS, INC. ("GALAXY" or "THE COMPANY"), ARTHUR LIEBERMAN A/K/A ARTY LEE ("LIEBERMAN"), RALPH AVNI ("AVNI"), CHARLES HOROWITZ ("HOROWITZ"), BRUCE KATZ ("KATZ"), STEVEN ROTH ("ROTH"), MARK GLAZER ("GLAZER"), IRWIN DONALD KIRSCHENBLATT A/K/A DONALD KIRSCH ("KIRSCH"), GEORGE PADILLA ("PADILLA"), AND ARTHUR SHEVACK ("SHEVACK"),

have engaged and are about to engage in acts and practices which constitute and will constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") as amended 15 U.S.C. 77e(a), 77e(c), and 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") as amended 15 U.S.C. 78j(b) and Rule 10b-5 promulgated by plaintiff Commission thereunder 17 C.F.R. 240.10b-5.

2. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act 15 U.S.C. 77t(b) and Section 21(e) of the Exchange Act, 15 U.S.C. 78u(e).

3. This Court has jurisdiction of this action under Section 22(a) of the Securities Act 15 U.S.C. 77v(a) and Section 27 of the Exchange Act 15 U.S.C. 78aa.

4. The Commission pursuant to the authority conferred under Section 10(b) of the Exchange Act has promulgated Rule 10b-5 which is now in effect and at all times hereinafter mentioned has been in effect.

5. Acts and transactions constituting the violations alleged herein have occurred within the jurisdiction of the

United States District Court for the Eastern District of New York and elsewhere.

6. The defendants will, unless restrained and enjoined, continue to engage in the acts and practices set forth in this complaint and in acts and practices of similar purport and object.

THE DEFENDANTS

7. Defendant Galaxy was incorporated in the State of New York on September 2, 1971, and has its principal place of business located at 1864 Flatbush Ave., Brooklyn, New York. Galaxy purports to market various foods and other items through distributors, but is engaged primarily in the sale of interests in a pyramid promotional scheme as described below.

8. Defendant Lieberman, who resides at 15540 Ocean Ave., Brooklyn, New York, is the Chairman of the Board of Galaxy and owns 50% of the Company's stock.

9. Defendant Avni who resides at 1914 Avenue Y, Brooklyn, New York, is the President of Galaxy and owns 50% of the Company's stock.

10. Defendant Horowitz, who resides at 2225 Benson Ave., Brooklyn, New York, was the Vice-President of Galaxy until

on or about March 15, 1973 when he terminated his employment with Galaxy.

11. Defendant Katz, who resides at 8520 149th Street, Howard Beach, New York, was an officer of Galaxy until on or about March 15, 1973 when he terminated his employment with Galaxy.

12. Defendant Roth, who resides at 1146 East 14th Street, Brooklyn, New York, was an officer of Galaxy until on or about March 15, 1973 when he terminated his employment with Galaxy.

13. Defendant Kirsch, who resides at 62-65 Saunders Street, Rego Park, New York, was an officer and Director of Galaxy until on or about January 15, 1973 when he terminated his employment with Galaxy.

14. Defendant Glazer who resides at 21-17 34th Ave., Long Island City, New York, is an officer of Galaxy.

15. Defendant Padilla, who resides at 175-05 145th Drive, Springfield Gardens, New York, is a Galaxy Distributor.

16. Defendant Shevack, who resides at 2115 Cropsey Ave., Brooklyn, New York, was a Galaxy Distributor until on or about December 15, 1972.

COMPLAINT

FIRST CAUSE OF ACTION

VIOLATIONS OF SECTION 17(a) OF THE SECURITIES ACT OF 1933 (15 U.S.C. 77q(a)), SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934 (15 U.S.C. 78j(b) AND RULE 10b-5 THEREUNDER (17 C.F.R. 240.10b-5)

17. Plaintiff realleges the facts set forth in paragraphs 1 through 16 and further alleges as follows:

18. From on or about September 2, 1971, to date hereof, the defendants have been, directly and indirectly, in the offer and sale of certain interests described below which constitute investment contracts, certificates of interest or participations in profit sharing agreements and interests commonly known as securities, all within the definition of "security" as set forth in Section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)) and Section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)), employing a device, scheme, and artifice to defraud and in so doing have been obtaining money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaging in acts,

practices and a course of business which would and does operate as a fraud and deceit upon persons as more fully described below.

19. Defendant Galaxy to some extent offers and sells products through a multi-level distribution network relating to a retail home food delivery service. Participants in the scheme may profit to some extent from recruitment of customers and retail sales. The plaintiff Commission makes no claims concerning these aspects of Galaxy's operation.

20. The primary emphasis of the defendants business operation is not upon recruitment of customers or retail sales, but upon the recruitment of persons who invest substantial amounts of money to purchase participations or investments in a promotional scheme in which each investor will then attempt to locate other investors for defendants to recruit. Pursuant to the scheme, each investor shares with defendants in the profits derived from the investments made by subsequent participants who were induced to attend the defendants' various recruitment meetings. As is more fully set forth below, this aspect of Galaxy's operation involves the offer and sale of unregistered securities by fraudulent means.

21. Defendant Galaxy operates its pyramid promotional scheme principally in the State of New York. Galaxy and the other defendants have offered and sold to the investing public more than $2 million in securities in the form of interests in Galaxy's pyramid promotion scheme.

THE INTERESTS SOLD BY THE DEFENDANTS

22. There are two types of interests in the Galaxy pyramid promotion offered and sold by the defendants. The defendants call one type of interest "Field Manager Franchise" (hereinafter Manager) and another type the defendants call "Distributorship Franchise" (hereinafter Distributor).

(a) In return for an aggregate cash investment of $5,000, a Manager will obtain a right to receive $750 as his share of the profits whenever the defendants recruit as a Manager or Distributor a person the investor has introduced to Galaxy.

(b) In return for an aggregate cash investment of $7,000 a Distributor will obtain the right to receive $1,050 as his share of the profits whenever the defendants

recruit as a Manager a person the investor has introduced to Galaxy and a right to receive $2,400 as his share of the profits whenever the defendants recruit as a Distributor a person the investor introduced to Galaxy.

(c) Apparently because of the right of the Distributor to derive greater promotional benefits from the recruitment of others into Galaxy's pyramid promotion scheme, the Distributor is represented by the defendants as being the most desirable form of investment. All prospective investors are relentlessly encouraged by the defendants to join Galaxy at the Distributor level. If investors have already joined Galaxy at the Manager level, they are still encouraged to elevate to the Distributor level.

OPPORTUNITY MEETINGS

23. (a) The principal selling effort of "Manager" and "Distributor" participation interests by the defendants occurs at promotional meetings of two types: (1) the "Presentation" or "Opportunity Meeting" where prospective investors are "introduced" to Galaxy through speakers, which are often the defendants, who explain the operation of Galaxy's business and the financial success an investor can

achieve; and (2) the "Sunday Step-Up Meeting" where prospective investors who have not been persuaded to join Galaxy at an Opportunity Meeting are again pressed to invest in the pyramid promotion.

(b) The atmosphere created by the defendants at these meetings is one of potential overwhelming financial success to be achieved by the potential investor, which is dramatized by the use of a blackboard upon which various amounts of money are written including the figure of $60,000 in large numbers which prospective investors are told they can earn with Galaxy in a single year.

(c) At these initial "Opportunity Meetings" for prospective investors, speakers, including one or more of the defendants, talk loudly and quickly with great emotion. There are cheers, chants, and applause from the audience, which are timed when the word "money" or "success" are mentioned or when anyone decides to invest in the Galaxy promotion. This cheering and applauding is always commenced by the defendants, their employees, and prior investors in the Galaxy promotion.

(d) At a certain point in the meeting the speaker will exclaim that he "smells money in the room" or "is there

any money in the room?" At this point, several participants hold up checks that they have purportedly just received from new investors andbring these checks to the speaker amid much cheering and applauding.

24. Prospects who have not succumbed at the "Opportunity Meetings" are invited to attend the "Sunday Step-Up Meetings." At these meetings there is usually only one speaker, which would be one or more of the defendants, who again emphasizes the huge benefits to be derived by investing in the Galaxy promotion. Again, the same psychological techniques and representations used at the original "Opportunity Meetings" were employed at "Sunday Step-Up Meetings." Toward the conclusion of the meeting, as an additional psychological effect, the speaker would hand out checks to existing investors purporting to represent their share of profits from recruitment of persons they have introduced into the scheme. The speaker calls the investors to the front of the room and calls off the amount of money each one is being paid. This is further accentuated by cheering and applauding. Next, the speaker will invite all prospective investors to stand in a line and asks each one to state his name, present occupation, and how they are joining

Galaxy, whether as a Manager or a Distributor. This procedure is also emphasized with cheering and applauding when prospective investors state that they will join Galaxy.

TRAINING SESSIONS FOR NEW INVESTORS

25. Training sessions are inaugurated for new investors in the Galaxy promotion to indoctrinate them in methods and techniques of bringing prospective investors to Galaxy meetings and aiding Galaxy to persuade them to invest. At these training sessions, new investors are informed by the defendants that everyone in Galaxy would be rich if they all helped Galaxy to sell participation interests to new investors.

(a) In order to motivate the new investors, the defendants set up simulated encounters between a Galaxy investor and a prospective investor at these training sessions. This was done to instruct new investors on how to approach strangers and convince them to attend a Galaxy meeting.

(b) Galaxy investors are directed to approach friends, relatives and strangers in every conceivable manner stating only that a management meeting is to take place where one can learn how to become rich. New investors are "taught"

to seek out prospective investors in Galaxy anywhere and everywhere; to walk up to a prospective investor and take his arm, looking into his eyes and saying, "Excuse me sir, my name is Mr. so and so. How would you like to make $60,000 a year?"

(c) Defendants do not permit investors to give their contacts any specifics about the defendants' operation. New investors are explicitly instructed not to inform the prospective investors in any detail about Galaxy, but just say enough to arouse his curiosity so he will come to a Galaxy presentation meeting. New investors are told by the defendants to recoup their investment in Galaxy by soliciting new investors in Galaxy, and thereby be entitled to share in the profits of the recruitment of new investors.

(d) In addition, new investors are taught when asking a prospective investor to join Galaxy to shake their heads in an affirmative manner in order to "suggest" to prospective investors that they say "yes" to joining Galaxy.

THE ILLUSION OF AFFLUENCE

26. The defendants foster an atmosphere of success to all prospective and existing investors. The defendants at opportunity meetings state or by their actions suggest

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that they and prior investors have purchased new clothes or new cars as a result of their successful investment in the Galaxy promotion. The use of this psychological technique by the defendants is calculated to entice prospective investors and existing investors to invest and reinvest in the Galaxy securities offered and sold by the defendants.

BANK LOANS

27. The defendants encourage prospective investors to join Galaxy by obtaining bank loans if they do not have enough money of their own to make an investment. New investors are directed to "friendly" banks where a loan can be obtained quickly and easily. Further, the defendants have told prospective investors to state on the bank loan application that the purpose of the loan is for new furniture or for medical payments, and not to reveal their actual purpose of purchasing participation interests in Galaxy. In addition, in order to further mislead and defraud lending institutions the defendants have supplied false and fraudulent W-2 employment records to prospective investors in order for them to state on the loan applications that they were employed when in fact they were unemployed and did not have the income as reflected by the W-2 form.

THE "BUY-BACK" AGREEMENT

28. The defendants originally promise investors and prospective investors that if they are not satisfied with their investment in Galaxy, most or all of their investment will be returned to them if Galaxy did not have at least 8,000 customer accounts by June 30, 1973. When investors have sought to exercise this "buy-back" agreement, the defendants have employed any of a series of deceptive devices as means to avoid honoring their agreement.

SUSTAINING THE FRAUDULENT SCHEME THROUGH SOLICITATION OF ADDITIONAL FUNDS

29. In furtherance of defendants' fraudulent scheme as heretofore described, on or about March 1, 1973, when Galaxy was in precarious financial condition, the defendants embarked upon a campaign to raise an additional $200,000 from existing investors. The defendants fraudulently misrepresented that the purpose of the funds was for supporting and sustaining the business of Galaxy as well as preserving the investments made by such existing investors. As a result of these activities, the defendants obtained approximately $25,000 from existing Galaxy investors.

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PARTICULAR MISREPRESENTATIONS AND OMISSIONS

30. In connection with the offer for sale and sale of participation interests in the defendants' pyramid promotion scheme, the defendants make numerous untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

31. The defendants made material misrepresentations and false statements, including but not limited to the following:

(a) that investors who join Galaxy will earn huge profits, as much as $60,000 a year;

(b) that many investors have earned and are earning substantial sums in Galaxy;

(c) that the defendants will return most or all of the monies paid by the investors if they choose not to continue in Galaxy;

(d) that Galaxy was to purchase or lease a computer for the business operations of Galaxy;

(e) that it would be possible to retire in two years by joining Galaxy;

(f) that one of the defendants stated he was a college graduate;

(g) that Galaxy was engaged in business operations in upstate New York and in Canada.

32. The defendants' omissions to state material facts include but are not limited to the following:

(a) the defendants obtained participations in the Galaxy scheme for which they did not pay;

(b) that the defendants received from 1/2% to 3% of all gross sales of participations and interests sold to investors in the pyramid program;

(c) that the defendants are interested solely in compelling investors to bring prospective investors to recruitment meetings where the defendants can induce these prospective purchasers to invest;

(d) that most of the investors in defendants' program lose the amounts invested;

33. By virtue of these collective elements, the investor becomes a pawn in a scheme upon which he is both psychologically and financially dependant. His "success" is contingent on defendants' successful management and conduct of the promotional enterprise. The individual investor is persuaded that any failure to succeed and earn profits must be of his own making.

34. By reason of the foregoing, the defendants, singly and in concert, have violated and will continue to violate, and are aiding and abetting violations of Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)), Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)), and Rule 10b-5 promulgated thereunder (17 C.F.R. 240.10b-5). The defendants will, unless enjoined, continue to engage in such acts and practices.

SECOND CAUSE OF ACTION

VIOLATIONS OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT OF 1933 (15 U.S.C. 77e(a) and 77e(c))

Plaintiff realleges the facts set forth in paragraphs 1 through 34 and further alleges as follows:

35. Defendants have been and are now, directly and indirectly, making use of means and instruments of transportation and communication in interstate commerce and of the mails to offer to sell and to sell such securities as described in paragraph 18 herein above, and are carrying and causing such securities to be carried through the mails and interstate commerce by means and instruments of transportation for the purpose of sale and delivery after sale.

36. No registration statement as required under the Securities Act is in effect nor has a registration statement been filed with the Commission with respect to the offering or sale of any of these securities by the defendants.

37. By reason of the foregoing, the defendants, singly and in concert, have violated and will continue to violate, and are aiding and abetting violations of Section 5(a) and 5(c) of the Securities Act (15 U.S.C. 77e(a) and 77e(c)). The defendants will, unless enjoined, continue to engage in such acts and practices.

NECESSITY FOR AN EQUITY RECEIVER FOR GALAXY

Plaintiff realleges the facts set forth in paragraph 1 through 37 and further alleges as follows:

38. By virtue of the defendant's violations of the registration and anti-fraud provisions of the Federal Securities Laws, the defendants have obtained in excess of $2 million from over 775 investors in defendant's pyramid sales scheme. By their actions, the defendants have demonstrated their total lack of fitness to solicit and manage the money of the investing public. Such assets as remains in Galaxy and all pecuniary benefits received by the defendants must be preserved and held by a receiver appointed by the Court for the benefit of Galaxy's public investors.

39. The plaintiff Commission has information on the basis of which it believes that:

(a) The corporate defendant is unable to meet its obligations as they become due.

(b) That the defendants have wasted and dissipated the funds collected from the investing public.

(c) That the defendants are continuing to cause waste and dissipation of funds collected from the investing public.

(d) Due to a lack of funds, the program of Galaxy for home food delivery service was forced to cease all operations on or about May 1, 1973.

(e) Investors are no longer able to obtain any monies, including profits or refunds, as promised by the defendants because of the cessation of all business operations by Galaxy.

40. By reason of the foregoing, an equity receiver for Galaxy is necessary in the public interest and for the protection of all persons who have invested in the securities the defendants have sold.

WHEREFORE, the plaintiff demands:

1. A temporary restraining order and decrees of preliminary and permanent injunctions restraining and enjoining the defendants, their officers, directors, agents, servants,

employees, successors and assigns and all persons in active concert or participation with them, from:

A. Directly or indirectly,

(1) Making use of any means or instruments of or communication in interstate commerce or of the mails to offer to sell, through the use or medium of any prospectus or otherwise the securities of Galaxy or any other securities unless as to such securities a registration statement has been filed with the Securities and Exchange Commission.

(2) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities of Galaxy or any other securities through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities.

(3) Carrying or causing to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale or for delivery after sale, the securities of Galaxy or any other securities, unless and until a

registration statement is in effect with the Securities and Exchange Commission.

Provided, however, that nothing in the foregoing portion of the requested injunction shall apply to any security which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended.

B. Directly or indirectly, in connection with the offer for sale, sale and purchase of the securities of Galaxy or any other securities, making use of any means or instruments or instrumentalities of transportation or communication in interstate commerce or by the use of the mails,

(1) to employ any device, scheme or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

2. An order appointing an equity receiver to take into his immediate custody, control and possession, all assets and property belonging to or in the possession of the defendant Galaxy which has been received as a result of the acts and practices complained of herein, including but not limited to all books and records of account and original entry, all funds, securities, property, premises, bank and trust accounts, and other assets, of whatever kind and nature and wherever situated, and authorizing, empowering, and directing such receiver to collect and take charge of and to hold and administer the same and any other funds entrusted to his care subject to further order of the Court, in order to prevent irreparable loss, damage and injury to investors, and to conserve and prevent the further misuse of funds, to remove the individual defendants from control and management of Galaxy and to prevent further evasions and violations of the securities laws by the defendants named in this action.

3. An order directing that an accounting be made of all assets and liabilities of all the defendants, together with all funds received and paid out by each of them from the inception of the corporate defendant to and including the date of such accounting, and that such accounting be accomplished

under the supervision of a receiver appointed herein or such other officer as the Court may appoint or designate, or upon such other terms and conditions as the Court may deem appropriate; and further, that the Plaintiff shall be entitled to inspect or copy the books, records, and other documents of the defendants wherever they may be located, and whether in the hands of the defendants or otherwise.

4. An order directing that defendant Galaxy Foods, Inc. disgorge all benefits it has derived directly or indirectly from the pyramid promotion described in this complaint, and such benefits to be held by the receiver appointed herein or such other officer as the Court may appoint or designate for the benefit of persons who may have just claims against defendant Galaxy Foods, Inc.

5. An order directing that the individual defendants disgorge to the receiver appointed herein or such other officer as the Court may appoint or designate, an amount equal to the sum of all pecuniary benefits they have derived, directly or indirectly, whether through salaries, commissions, or otherwise, from their control, ownership of, or participation in the pyramid promotion of Galaxy Foods, Inc.,

described in this complaint, and directing that the receiver or other officer hold those funds for the benefit of persons who may have just claims against those defendants.

6. An order prohibiting the defendants and their officers, agents, servants, employees, attorneys (successors or assigns), and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from:

(a) dissipating, concealing or disposing of in any manner, any assets, choses-in-action or other property of the defendants herein; and

(b) destroying, mutilating, concealing or altering or disposing of in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations or other property of the defendants herein, until further order of this Court.

7. An order directing that the defendants and each of them shall at their own expense cause a copy of all decrees entered herein by this Court to be served by the defendants personally upon all of their officers, directors, agents, employees, servants, attorneys, and other persons

in active concert or participation with them and upon each and every investor in the Galaxy pyramid promotion.

8. Such other and further relief as this Court may deem just and equitable.

Respectfully submitted,

/s/ William D. Moran

WILLIAM D. MORAN
Regional Administrator
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
26 Federal Plaza
New York, New York 10007

OF COUNSEL:

Donald N. Malawsky
Allan M. Lerner
Harry L. Garmansky

Dated: New York, New York
November X, 1973

ORDER TO SHOW CAUSE SEEKING APPOINTMENT OF AN EQUITY RECEIVER, ETC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. GALAXY FOODS, INC. ARTHUR LIEBERMAN A/K/A ARTY LEE RALPH AVNI CHARLES HOROWITZ BRUCE KATZ MARK GLAZER STEVEN ROTH IRWIN DONALD KIRSCHENBLATT A/K/A DONALD KIRSCH GEORGE PADILLA ARTHUR SHEVACK Defendants.	73 Civil Action No. 1742 (ERN) ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

The plaintiff, Securities and Exchange Commission (Commission) on November 26, 1973, filed a Complaint in this action alleging violations of Sections 5(a) and (c), and 17(a) of the Securities Act of 1933 (Securities Act), 15 U.S.C. 77e(a), 77e(c), and 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5. On the basis of such Complaint and the affidavit of Harry L. Garmansky attached hereto, and it appearing that the defendants herein, pending

ORDER TO SHOW CAUSE SEEKING APPOINTMENT OF AN EQUITY RECEIVER, ETC.

final determination of this action will, unless restrained, engage in acts and practices in violation of the federal securities laws and that immediate and irreparable injury, loss and damage will result to members of the investing public, it is hereby:

ORDERED that defendants GALAXY FOODS, INC., ARTHUR LIEBERMAN, RALPH AVNI, CHARLES HOROWITZ, BRUCE KATZ, MARK GLAZER, STEVEN ROTH, IRWIN DONALD KIRSCHENBLATT, GEORGE PADILLA, and ARTHUR SHEVACK, show cause, if any there be, to a judge of this Court at 2 o'clock in the AFTERnoon, on DECEMBER 7, 1973, at Courtroom 7 in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, or as soon thereafter as counsel can be heard, why a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Proceedure should not be granted and an equity receiver appointed over the corporate defendant to marshal, conserve, and protect the remaining assets of Galaxy Foods, Inc., from further misuse;

IT IS FURTHER ORDERED that, pending determination of this motion for a preliminary injunction, and pending the appointment and installation of an equity receiver as

requested by the Commission, the defendants herein, their officers, directors, nominees, agents, servants, employees, attorneys, successors, assigns, depositories, banks, and those persons in active concert or participation with them, and each of them be and they hereby are restrained from, directly or indirectly, transferring, changing, selling, pledging, assigning, or taking any other action or causing any such action to be taken with respect to any assets of defendant Galaxy, its subsidiaries or affiliates, which would or could result in the removal of such assets from the boundaries of the United States.

IT IS FURTHER ORDERED that the defendants herein shall submit to this Court within 10 days after the expiration of this Order a complete listing of all transfers, sales, pledges, assignments or other dispositions of defendants' assets effected during the existence of this Order, and

IT IS FURTHER ORDERED that the defendants herein shall submit to this Court within two (2) days of the entry of this Order a complete listing of the names and addresses of all banks and depositories where any assets of the defendants are on deposit, are pledged or are otherwise held.

BEST COPY AVAILABLE

AFFIDAVIT OF HARRY L. GARMANSKY IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- GALAXY FOODS, INC. ARTHUR LIEBERMAN a/k/a ARTY LEE RALPH AVNI CHARLES HOROWITZ BRUCE KATZ STEVEN ROTH MARK GLAZER IRWIN DONALD KIRSCHENBLATT a/k/a DONALD KIRSCH GEORGE PADILLA ARTHUR SHEVACK Defendants.	Civil Action File No. AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HARRY L. GARMANSKY, being duly sworn, deposes and says:

1. I am an attorney employed in the New York Regional Office of Plaintiff, Securities and Exchange Commission ("Commission") located at 26 Federal Plaza, New York, New York 10007.

2. I make this Affidavit in support of the application by the Commission for, among other things, a Temporary

Restraining Order, an Order to Show Cause, a Preliminary Injunction and the Appointment of a Receiver as more fully appears below.

3. This Affidavit is based upon my personal examination of books, records, and other documents of defendant Galaxy Foods, Inc. ("Galaxy"), sworn transcribed statements made to me by each of the defendants, statements made to me by individuals who have invested monies in Galaxy, and other information contained in the official files of the Commission.

4. Since on or about September 2, 1971, the defendants herein have been making use of the means or instruments or instrumentalities of transportation or communication in interstate commerce or of the mails to carry out and further the business operations of Galaxy more fully described below.

5. Galaxy is a corporation organized in New York on September 2, 1971, and has its principal place of business located at 1846 Flatbush Avenue, Brooklyn, New York. Galaxy and the other defendants since September 2, 1971, have been engaged in the offer for sale and sale of certain interests which constitute investment contracts, certificates of interest or participation in profit sharing agreements and

interests commonly known as "security" and in connection therewith, have been employing a device and a scheme to defraud investors in Galaxy as more fully described below. The defendants have raised over $2,000,000 from over 775 investors in Galaxy for the purported business purpose of retail home delivery of food and non-food items by Galaxy.

No registration statement has ever been filed by Galaxy with the Commission as required by the federal securities laws in order to offer for sale and sell the interests referred to above.

6. Defendant Lieberman, who resides at 15540 Ocean Avenue, Brooklyn, New York, is the Chairman of the Board of Galaxy, owns 50% of the company's stock, and was the principal promoter in that he was responsible for formulating, managing and supervising the daily operations of Galaxy and the offer and sale of its participation interests.

7. Defendant Avni, who resides at 1914 Avenue Y, Brooklyn, New York, is the president of Galaxy and owns 50% of the company's stock and was responsible, along with Lieberman, for formulating the business operations of Galaxy.

8. Defendant Horowitz, who resides at 2225 Benson Avenue, Brooklyn, New York, was the Vice-President of Galaxy

until on or about March 15, 1973 when he terminated his employment with Galaxy.

9. Defendant Katz, who resides at 8520 149th Street, Howard Beach, New York, was an officer of Galaxy until on or about March 15, 1973 when he terminated his employment with Galaxy.

10. Defendant Roth, who resides at 1146 East 14th Street, Brooklyn, New York, was an officer of Galaxy until on or about March 15, 1973 when he terminated his employment with Galaxy.

11. Defendant Kirsch, who resides at 62-65 Saunders Street, Rego Park, New York, was an officer and director of Galaxy until on or about January 15, 1973 when he terminated his employment with Galaxy.

12. Defendant Glazer, who resides at 21-17 34th Avenue, Long Island City, New York, is an officer of Galaxy.

13. Defendant Padilla, who resides at 175-05 145th Drive, Springfield Gardens, New York, was an officer of Galaxy until on or about June 15, 1973 when he left Galaxy.

14. Defendant Shevack, who resides at 2115 Cropsey Avenue, Brooklyn, New York, was a Galaxy "Distributor" until on or about December 15, 1972.

AFFIDAVIT OF HARRY L. GARMANSKY IN SUPPORT OF MOTION

THE INTERESTS SOLD BY THE DEFENDANTS

15. The defendants offer for sale and sell to the investing public two types of interests in Galaxy; the "Field Manager Franchise" and the "Distributorship Franchise" for a consideration of $5,000 and $7,000 respectively.

16. Certain rights and privileges attach to an interest an investor purchases from Galaxy including the right to earn commissions derived from the recruitment of other investors. (See Galaxy's Distributors Business Manual, Part II, pp. 1 to 4, attached hereto as Exhibit A)

17. All prospective investors in Galaxy are encouraged by the defendants to purchase the Distributorship interest for $7,000, and prospective investors are told it is the most desirable form of investment in Galaxy.

OPPORTUNITY AND SUNDAY STEP-UP MEETINGS

18. The main recruitment by Galaxy of its investors occurs at Opportunity Meetings and prospective investors are invited to attend these meetings.

19. Prospective investors are induced to attend the Opportunity Meeting because of promises of huge financial rewards.

20. At the Opportunity Meetings, prospective investors would hear speakers from Galaxy, such as Lieberman, Katz, Horowitz, Roth and Glazer, tell them about the business operations of Galaxy.

21. At Opportunity Meetings, speakers would tell prospective investors that they can earn $60,000 a year if they join Galaxy, and this figure is written on a large blackboard amid applauding and cheering by existing Galaxy investors and the Galaxy management.

22. Speakers at these meetings would make references to Galaxy investors who were now successful because they had joined Galaxy and could now afford new suits and new cars.

23. During both the Opportunity and Sunday Step-Up Meetings, speakers would exclaim that they "smell money in the room" or ask rhetorically "is there any money in this room"? After the speaker recites the question, checks are brought to him for the purpose of announcing the names of new investors who purchased interests in Galaxy. This act is accompanied by cheering and applauding.

24. At Sunday Step-Up Meetings, speakers would call a prospective investor to the front of the room to "hand-out" checks from Galaxy to existing investors who had earned commissions derived from the sponsorship of new investors.

The payee's name and the amount of the check were read aloud and there would be the usual cheering and applauding by the existing investors and the defendants. The speaker would then state to the prospective investors that the investors who had just been paid had only been with Galaxy a few short weeks.

25. At the meetings, speakers would tell prospective investors that by joining Galaxy, they could obtain new clothes and cars and be successful. Also, Lieberman, at several meetings threw a $100 bill on the floor and allowed a prospective investor to pick up the $100 bill and keep it. Lieberman then stated to the effect "that anyone will always want more money."

26. Speakers at the meetings would tell prospective investors that Galaxy would receive a computer for its business operations. This was first stated in early 1972, and for successive meetings thereafter. Galaxy did receive a computer in December, 1973, but never put it into operation.

27. Speakers would state to prospective investors that Galaxy was going to begin retail home delivery of food items on July 1, 1972. The date was then changed to August, 1972, then September, 1972, then to October, 1972, and finally to November, 1972 when limited food delivery commenced. Many new

investors joined Galaxy because of these "target" dates for retail operations. Further, speakers informed prospective investors that Galaxy had operations in upstate New York and even in Canada.

28. Speakers told prospective investors at the meetings that Galaxy was going to obtain 10,000 customers and distribute these customers among all the investors in Galaxy in order for everyone to share in the profits when retail food operations began. Galaxy never obtained the 10,000 customers, and in fact, told all the investors that they themselves would have to obtain between 8,000 to 10,000 customers before Galaxy could begin retail operations. Further, prospective investors were told prior to purchasing an interest in Galaxy that they could earn commissions by obtaining customers to order food from Galaxy. After the new investor invested in Galaxy, he was told no commissions would be paid for customers until approximately April 1973, five months after the start of retail operations, and that Galaxy's home delivery food service would only be on a limited "pilot" program basis with food delivery no more than three miles from Galaxy's warehouse.

AFFIDAVIT OF HARRY L. GARMANSKY IN SUPPORT OF MOTION

29. At one point in the Sunday Step-Up meeting, the speaker asks all prospective investors to stand and face the existing Galaxy investors. The speaker then asks each prospective investor to state his name, present job, and how he is going to join Galaxy, as a Field Manager or Distributor. Most of the prospective investors are embarrassed to say that they are not joining Galaxy, and consequently many indicate that they will join to avoid this embarrassment. After each prospective investor states he is joining, the existing investors cheer and applaud.

30. Most of the investors which the defendants enticed to join Galaxy had little formal education; were in the upper lower to lower middle economic strata; were in minority groups, i.e., Negroes, Puerto Ricans, and Spanish, and some could not even read or speak English.

31. The speakers at the Opportunity and Sunday Step-Up meetings memorized their speeches from a prepared text written by Galaxy's management. (See Exhibit A) In addition, the meetings were all conducted in the same way with applauding and cheering occurring at precisely the same times. In fact, after

a new investor purchases an interest in Galaxy, he is informed to show motivation and enthusiasm by cheering and applauding at the meetings at certain intervals.

TRAINING SESSIONS FOR NEW INVESTORS

32. After an investor has made his investment in Galaxy, he must attend a training session varying in length from two to five days where Galaxy instructors, such as Glazer, Padilla, Roth, Katz, and Morowitz, "teach" new investors the business techniques and operations of Galaxy.

33. At these training sessions new investors are told to recruit people into Galaxy in order to build Galaxy and to recoup their investment by earning commissions.

34. New investors were instructed to bring anyone they could to the Galaxy opportunity meetings. Instructors told investors to approach prospective investors on the street, introduce themselves, and ask the prospect if he would like to earn $60,000 a year. Further, investors were told not to give out to much information to the prospective investors, but just to arouse his curiosity so he would come to an Opportunity Meeting. Instructors in Galaxy would perform simulated encounters to show new investors the methods they should employ in recruiting people into Galaxy.

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AFFIDAVIT OF HARRY L. GARMANSKY IN SUPPORT OF MOTION

THE ILLUSION OF AFFLUENCE

35. The defendants entice prospective investors to invest in Galaxy by stating to them that if they do invest in Galaxy, they can be successful and could then afford new clothes or new cars.

36. The defendants hold themselves out to prospective investors as being successful in Galaxy because they can afford to purchase new clothes and new cars, but failed to disclose to prospective and existing investors in Galaxy that they were receiving a fixed income from Galaxy as described in paragraph 40, infra.

BANK LOANS

37. Padilla and Shevack and other defendants, in order to persuade new investors to purchase an interest in Galaxy, told prospective investors that they could obtain the funds to invest by borrowing from banks. New investors were given loan applications and instructed by Padilla, Shevack and other defendants to state the loan was for purposes other than investing in Galaxy, namely for home improvements or medical purposes. Further, new investors were given false W-2 employment records to indicate that they were employed when in fact they were unemployed.

AFFIDAVIT OF HARRY L. GARMANSKY IN SUPPORT OF MOTION

GALAXY'S BUY-BACK AGREEMENT

38. At Galaxy meetings, speakers would tell prospective investors that once they purchased an interest in Galaxy, they would be allowed to "sell" their interest back to Galaxy if Galaxy did not have at least 8,000 customer accounts by June 30, 1973 and thus recoup most of their investment. The defendants used this "buy-back" agreement as a form of "guaranteed" investment to induce prospective investors to invest in Galaxy. The defendants have employed deceptive devices such as delaying techniques and the making of false promises concerning the future business potential of Galaxy as a means of inducing investors to forego their rights under the "Buy-Back Agreement". (See advertisement by Galaxy attached hereto as Exhibit B)

39. At various meetings of Galaxy investors, the defendants would not tell the investors the financial condition of Galaxy, the reasons why Galaxy was not retailing food items yet, or why Galaxy did not have enough money to begin retailing on a large scale despite these questions being asked by investors from time to time. In fact, the defendants, in order to minimize their own failing, told Galaxy investors that they,

the investors, had not been working hard enough in order to make Galaxy a success.

40. The defendants never told prospective investors or existing investors that approximately thirteen "honorary distributorships" were assigned to the defendants and that the defendants received from 1 1/2% to 3% of all gross sales of Galaxy's interests as a commission.

SUSTAINING THE FRAUDULENT SCHEME THROUGH SOLICITATION OF ADDITIONAL FUNDS

41. In March, 1973, investors were told by one or more of the defendants that Galaxy needed $200,000 or it would be forced to close down its doors and cease all business operations. The defendants encouraged existing investors to loan or contribute additional funds to Galaxy. This fund raising campaign by the defendants helped Galaxy to raise approximately $25,000.

42. Galaxy stopped its retail food delivery program as of May 1, 1973, after only approximately 5 months in operation due to a lack of funds.

43. As of the present date, Galaxy, because of its inability to pay its debts, has been forced to abandon its

principal business offices at 1864 Flatbush Avenue, Brooklyn, New York and its warehouse, located at 303 Stanley Avenue, Brooklyn, New York.

NEED FOR EQUITY RECEIVER, AN ACCOUNTING, AND DISGORGEMENT OF BENEFITS

44. Based on the foregoing information, it is evident that Galaxy and the other defendants have perpetrated a massive fraud on the investing public through Galaxy's pyramid sales scheme. Purchasers of interests in Galaxy have suffered losses of over $2,000,000. The foregoing activities on the part of the defendants require that the public be protected from the defendants herein, and that all the defendants be enjoined as demanded in the Order to Show Cause, attached hereto. Moreover, it is necessary that an equity receiver be appointed to marshal and take possession of the remaining assets of Galaxy, prepare an accounting and to distribute these assets equitably to those persons rightfully entitled thereto. The defendants by their conduct have shown that they cannot be relied upon to protect the interests of the investors in Galaxy.

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AFFIDAVIT OF HARRY L. GARMANSKY IN SUPPORT OF MOTION

45. Galaxy and other defendants should be ordered to disgorge all benefits derived from the above-mentioned illegal scheme and such benefits be turned over to the equity receiver for the benefit of those persons rightfully entitled thereto. To assist the foregoing order, the Court should freeze the assets of the defendants herein so that dissipation of the ill-gotten benefits may be avoided.

46. An Order to Show Cause is required to bring this matter on for immediate hearing since the defendants are continuing to expose the investors in Galaxy to undue risks and to prevent dissipation of Galaxy's assets.

47. No previous application for the relief sought herein has been made to this or any other court or judge thereof.

HARRY L. GARMANSKY

Sworn to before me this
23rd day of November, 1973

NOTARY PUBLIC

MANDEL
NOTARY PUBLIC, State of New York
No. 41 7689940
Qualified in Queens County
Certificate Filed in Queens County
Commission Expires March 30, 1974

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY.

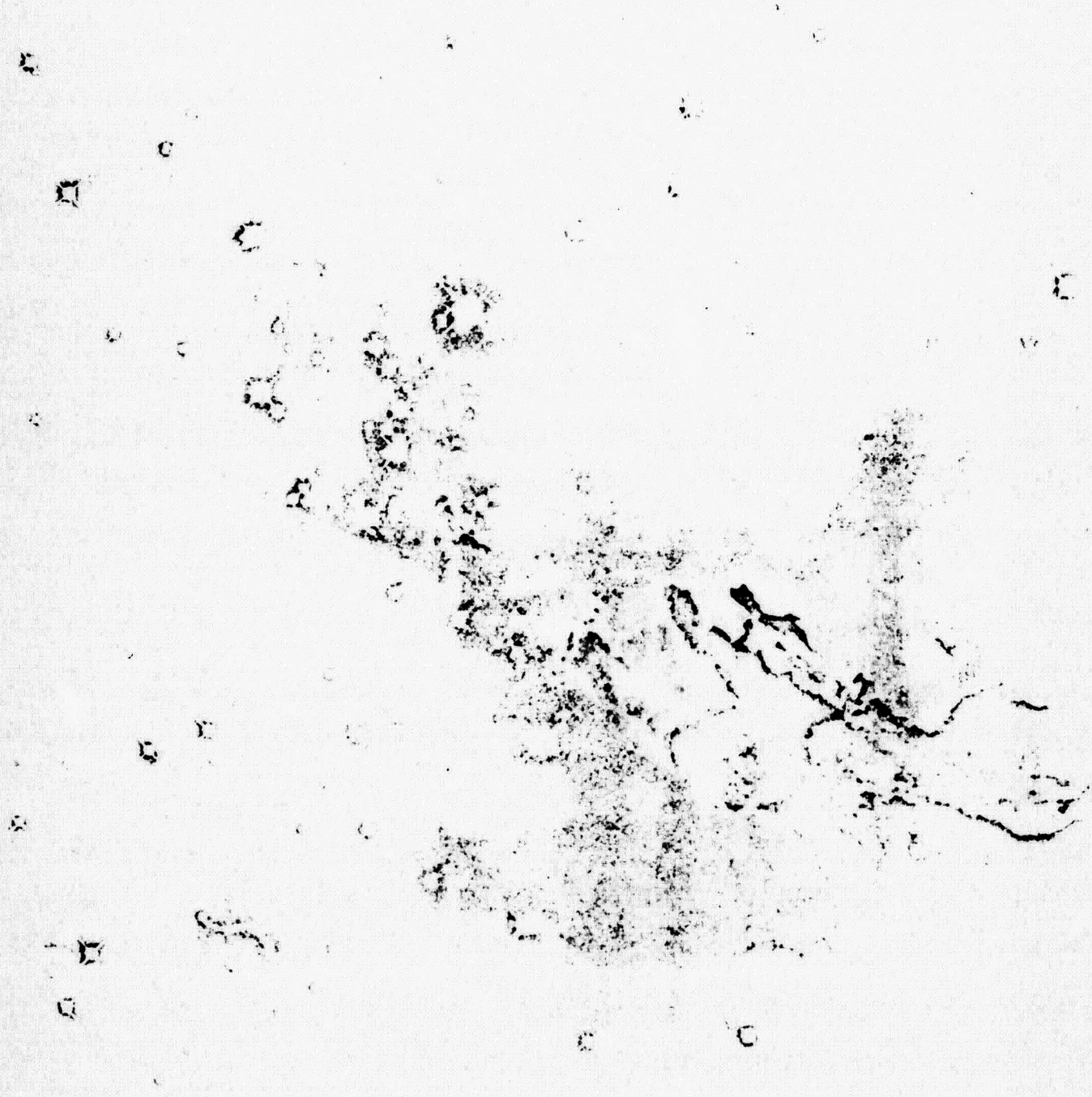

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EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

WELCOME TO THE GALAXY TEAM

WE WOULD LIKE TO TAKE THIS OPPORTUNITY TO WELCOME YOU TO A MOST UNUSUAL "JOINT VENTURE". WE BELIEVE THAT, IN A DEMOCRATIC SOCIETY, EVERY MAN OR WOMAN SHOULD HAVE THE RIGHT TO CHOOSE A VEHICLE FOR SUCCESS, THROW THEMSELVES INTO THAT ENDEAVOR, WORK TOWARDS A GOAL AND ULTIMATELY DETERMINE WHETHER THEY SUCCEED OR FAIL. UNFORTUNATELY, MOST AMERICANS SEEM TO HAVE LOST THE PIONEERING SPIRIT. PERHAPS, IT HAS EVEN REACHED THE POINT WHERE MOST PEOPLE RESENT THE MAN OR WOMAN WHO DOES PIONEER. WE HAVE FOUND, HOWEVER, THAT THE SPIRIT OF OUR ANCESTORS WHO CROSSED THE PLAINS OR WHO DISCOVERED THE MANY INVENTIONS THAT HAVE BENEFITED MANKIND THROUGHOUT HISTORY, IS NOT QUITE AS DEAD AS SOME WOULD HAVE US BELIEVE. THIS SPIRIT IS ESPECIALLY ALIVE IN YOU. FOR YOU HAVE, BY ENTERING GALAXY, DEMONSTRATED A BELIEF IN WHAT, EVEN NOW, IS STILL A DREAM. WE KNOW, WITH A CONCERTED EFFORT ON EVERYONE'S PART, THAT THIS "DREAM" WILL BECOME A REALITY.

THE PROGRAM ON THE FOLLOWING PAGES HAS BEEN CAREFULLY THOUGHT OUT AND RESEARCHED. IT IS A PROGRAM UNDER WHICH THE AVERAGE DISTRIBUTOR MAY EARN LARGE SUMS OF MONEY; BUT, MORE IMPORTANTLY, IT SHOULD BE THE BASIS OF ANY PRESENTATION OF GALAXY'S MARKETING PLAN TO ANY INDIVIDUAL. THAT BEING THE CASE, MAY WE SUGGEST AT THIS TIME THAT YOU MEMORIZE IT AND USE IT.

IN THE MEANTIME, MAY WE WISH YOU WELL AND MAY YOUR OWN DREAMS BE YOUR ONLY BOUNDARIES.

THE BOARD OF DIRECTORS

REV. 10/72

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

GALAXY OPPORTUNITY MEETING

GOOD EVENING, LADIES AND GENTLEMEN. TONIGHT WE WOULD LIKE TO PRESENT AN IDEA TO YOU--AN IDEA WHICH COULD REVOLUTIONIZE THE FOOD INDUSTRY AND COULD CONCEIVABLY MAKE YOU FINANCIALLY SUCCESSFUL BEYOND YOUR GRANDEST DREAMS. KEEP IN MIND THAT WHAT YOU ARE ABOUT TO SEE TONIGHT IS A PROVEN VEHICLE FOR SUCCESS AND THE MARKETING PLAN WE WILL BE DISCUSSING HAS BEEN USED SUCCESSFULLY TO MAKE MEN AND WOMEN THOUSANDS AND EVEN MILLIONS OF DOLLARS. LET'S BEGIN THIS DISCUSSION BY EXAMINING THE PRESENT INDUSTRIAL SITUATION IN THE WORLD. IT IS A FACT THAT DURING OUR CURRENT INFLATIONARY PERIOD, AND EVEN DURING TIMES OF RECESSION, THE FOOD INDUSTRY CONTINUES TO FLOURISH. I'M SURE YOU'VE HEARD THE STORY OF THE MAN WHO, AFTER LOSING HIS FORTUNE IN THE CRASH OF 1929, WAS REDUCED TO SELLING APPLES FOR A LIVING. OBVIOUSLY, THIS MAN WAS AWARE OF THE FACT THAT "EVERYONE'S GOT TO EAT". INDEED, FOOD IS THE NUMBER ONE INDUSTRY IN THE WORLD.

GALAXY FOODS, INCORPORATED HAS DEVISED A REMARKABLE NEW WAY OF REACHING AND SERVICING THE CONSUMER. YOU CAN BE PART OF THIS REVOLUTIONARY NEW SERVICE WHICH WE BELIEVE MAY SWEEP THE NATION. OUR CONCEPT IS BASICALLY A PHONE ORDER, HOME DELIVERY SERVICE FOR ALL SUPERMARKET ITEMS, ALLOWING THE CONSUMER TO LOOK IN A CATALOG, SELECT ALL THE NAME-BRAND ITEMS SHE WOULD ORDINARILY PURCHASE IN THE SUPERMARKET, (WHETHER THEY BE FOOD, NON-FOOD, FROZEN FOOD, MEAT, PRODUCE, DAIRY, ETC.), PHONE IN AND HAVE THE ORDER DELIVERED WITHOUT HAVING TO PAY A DELIVERY CHARGE, BUY A FREEZER OR SIGN A CONTRACT; AND THE PRICES FOR ALL THIS MERCHANDISE LISTED IN THE CATALOG ARE HIGHLY COMPETITIVE WITH THOSE IN SUPERMARKETS. TO BEST ILLUSTRATE BOTH THE SERVICE AND HOW YOU COULD BE INVOLVED, I

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

WOULD LIKE TO INTRODUCE _____.

GOOD EVENING, LADIES AND GENTLEMEN. IT IS MY RESPONSIBILITY TODAY TO SHOW YOU WHAT THE FOOD-FONE SERVICE BASICALLY IS, AND TO EXPLAIN HOW YOU CAN EARN LARGE SUMS OF MONEY MERELY BY RECRUITING SALESMEN AND HAVING THEM INTRODUCE OUR SERVICE TO CONSUMERS. YOUR POSITION WOULD BE ONE OF MANAGEMENT, FOR THE SMART BUSINESSMAN MUST REALIZE THAT ONLY AS AN EMPLOYER CAN HE EVER REACH REAL FINANCIAL SUCCESS.

LET US SAY THAT YOU ARE IN A MANAGEMENT POSITION WITH GALAXY FOODS. YOUR JOB IS TO RECRUIT SALESMEN TO INTRODUCE FOOD-FONE TO THE CONSUMERS. TO SIMPLIFY MATTERS, LET'S ILLUSTRATE, FIRST, HOW OUR SERVICE WILL EARN MONEY FOR YOUR SALESMEN. THE AVERAGE FULL-TIME SALESMAN SHOULD BE ABLE TO SEE FROM 30 TO 50 ACCOUNTS PER DAY. WE ARE, OF COURSE, TALKING ABOUT FULL-TIME SALESMEN THAT YOU COULD RECRUIT THROUGH ADS IN NEWSPAPERS OR BY SIMILAR METHODS. FOR THIS ILLUSTRATION, LET'S ASSUME THAT ONLY 20 NEW ACCOUNTS CAN BE OPENED PER DAY OR 100 FOR THE WEEK. THE AVERAGE FAMILY OF FOUR SPENDS APPROXIMATELY $48 PER WEEK ON SUPERMARKET PURCHASES, SO LET'S BE CONSERVATIVE AND USE THE BELOW AVERAGE PURCHASE OF $25 PER NEW ACCOUNT. THIS WOULD GIVE YOUR SALESMAN A VOLUME OF $2,500 DURING HIS FIRST WEEK WITH GALAXY. NOW, AS HE IS WORKING AT 5% COMMISSION ON ALL NEW ACCOUNTS, HE HAS EARNED $125 HIS FIRST WEEK IN OUR PROGRAM. THIS IS MORE MONEY THAN MOST NEW SALESMEN EARN DURING THE FIRST WEEK WITH A NEW COMPANY. SO, LET'S SAY HE REPEATS THIS PERFORMANCE DURING HIS SECOND WEEK BY ACQUIRING 20 CUSTOMERS PER DAY OR 100 FOR THE WEEK. AGAIN, USING THE EXAMPLE OF $25 IN SUPERMARKET PURCHASES FOR EACH CUSTOMER, HE WILL HAVE ACQUIRED AN ADDITIONAL $2,500 IN ORDER VOLUME.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

YOUR SALESMEN WILL BE TRAINED, AS PART OF HIS INITIAL PERSONAL CONTACT WITH HIS CUSTOMERS, TO DEMONSTRATE THE USE OF OUR CATALOG AND THE COMPLETE PRICE LISTING OF FOODS AND OTHER SUPERMARKET ITEMS AVAILABLE THROUGH THE FOOD-FONE SERVICE. THESE ITEMS WILL INITIALLY CONSIST SOLELY OF BRAND NAME FOODS, (SUCH AS HEINZ, BIRDSEYE, LIPTON, COCA-COLA, CAMPBELL'S, KELLOGG'S, DEL MONTE AND MANY HUNDREDS MORE). AT A LATER DATE, IT ALSO WILL INCLUDE GALAXY'S OWN PRIVATE LABEL ITEMS PACKAGED ESPECIALLY FOR US. THE PRICES ARE COMPETITIVE WITH NORMAL SUPERMARKET PRICES AND ALMOST EVERY ITEM AVAILABLE IN MAJOR SUPERMARKETS WILL BE AVAILABLE THROUGH FOOD-FONE. THE CUSTOMERS WILL ALSO BE GIVEN A LOCAL TELEPHONE NUMBER TO CALL FOR REORDERS.

THE CUSTOMER'S ORDER WILL BE DELIVERED BY OUR OWN TRUCKS, FROM OUR OWN WAREHOUSE, AT NO CHARGE TO THE CONSUMER, MAKING CONTINUAL RESERVICING BY THE SALESMAN UNNECESSARY. THE SALESMAN WILL, HOWEVER, RECEIVE 1% COMMISSION ON THE RESERVICED ORDER, EVEN THOUGH HE IS NOT RESPONSIBLE FOR RECONTACTING THE CUSTOMER. NOW, ASSUMING THAT THE CUSTOMERS FROM THE WEEK BEFORE ONLY ORDER THE BELOW AVERAGE AMOUNT OF $25 EACH, YOUR SALESMEN WOULD HAVE A VOLUME OF $2,500 ON WHICH HE IS EARNING HIS 1% REORDER COMMISSION, OR $25. COMBINING THIS WITH HIS 5% NEW ORDER COMMISSION FOR THE WEEK, YOUR SALESMAN WOULD HAVE EARNED $150 HIS SECOND WEEK WITH FOOD-FONE. CONTINUING, IN HIS THIRD WEEK, LET'S ONCE AGAIN ASSUME THAT YOUR SALESMAN ACQUIRES ONLY 20 CUSTOMERS PER DAY OR 100 FOR THE WEEK. STILL USING THE BELOW AVERAGE PURCHASE OF $25 PER CUSTOMER, HE HAS ACQUIRED AN ADDITIONAL $2,500 IN VOLUME ON WHICH HE IS EARNING 5%, OR

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

$125. AGAIN, HIS CUSTOMERS FROM THE PREVIOUS WEEKS CAN BE AVAILING THEMSELVES OF THE LOCAL FOOD-FONE TELEPHONE NUMBER TO REORDER, BRINGING HIS POTENTIAL REORDER VOLUME TO $5,000, ON WHICH HE EARNS 1% OR $50. SO, AFTER HIS THIRD WEEK WITH GALAXY, HE COULD BE EARNING A TOTAL OF $175 PER WEEK. CONTINUING INTO HIS FOURTH WEEK, AGAIN, LET'S ASSUME HE WILL ACQUIRE 20 CUSTOMERS PER DAY OR 100 FOR THE WEEK. STILL USING THE BELOW AVERAGE PURCHASE OF $25 PER CUSTOMER, HE WILL HAVE A NEW ORDER VOLUME OF $2,500 ON WHICH HE IS EARNING THE FULL 5% COMMISSION OR $125. ADDING THIS TO THE VOLUME OF $7,500 HIS OLD ACCOUNTS MAY BE CALLING IN, (ON WHICH HE IS EARNING 1% OR $75), HE CAN HAVE TOTAL EARNINGS OF $200 PER WEEK AFTER ONLY A MONTH WITH GALAXY.

LADIES AND GENTLEMEN, AFTER TWO MONTHS OF THIS VOLUME, YOUR SALESMAN COULD BE EARNING $200 A WEEK, NOT COUNTING COMMISSIONS ON ANY NEW ACCOUNTS THAT HE OPENS OR COMMISSION ON REFERRALS.

NOW, SO FAR, WE HAVE SHOWN YOU WHAT A SALESMAN COULD EARN BY MERELY INTRODUCING THE FOOD-FONE SERVICE TO CONSUMERS. THIS IS STILL NOT THE REASON THAT YOU ARE HERE TONIGHT. TO EXPLAIN HOW YOU CAN BE A PART OF THIS GREAT VENTURE I'D LIKE TO INTRODUCE _____.

THANK YOU AND GOOD EVENING. MY NAME IS_____. IF YOU ARE BEGINNING TO FEEL EXCITED, I KNOW HOW YOU FEEL. ONLY A SHORT TIME AGO, I WAS IN THE SAME POSITION AS YOU ARE IN TONIGHT, HEARING ABOUT AN OPPORTUNITY THAT IS ALMOST UNBELIEVEABLE IN ITS SCOPE. AT THAT TIME, I WAS MADE TO UNDERSTAND THAT THE RETAIL OPPORTUNITY THAT YOU HAVE ONLY PARTIALLY SEEN UP TO NOW, CANNOT EXIST WITHOUT A NETWORK OF DISTRIBUTORS WHO HIRE SALESMEN TO BE TRAINED TO ACQUIRE

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ACCOUNTS AND EFFECTIVELY ESTABLISHING A HUGE COMPANY INVENTORY TO MEET THE NEEDS OF CONSUMERS. WITHOUT THESE DISTRIBUTORS, THIS PROGRAM WOULD HAVE REMAINED AN IDEA, RATHER THAN A VEHICLE FOR SUCCESS.

AT THE PRESENT TIME, WE HAVE APPROXIMATELY _____ DISTRIBUTORS AND FIELD MANAGERS WITH GALAXY FOODS. OUR QUOTA FOR NEW YORK STATE IS A TOTAL OF 1079 FIELD MANAGERS AND DISTRIBUTORS. YOU CAN BEGIN WITH GALAXY IN THE POSITION OF EITHER A DISTRIBUTOR OR FIELD MANAGER. AS A FIELD MANAGER, YOU CAN EARN COMMISSION (OR OVERRIDES AS THEY ARE CALLED), ON THE EFFORTS OF YOUR SALESMEN. TO ILLUSTRATE THIS, LET'S ASSUME YOU START AS A FIELD MANAGER WITH GALAXY. NOW, THIS IS YOU--LET US ASSUME THAT THROUGH THE VARIOUS METHODS OF RECRUITING AT YOUR DISPOSAL, YOU CAN ONLY RECRUIT 2 SALESMEN IN YOUR FIRST MONTH. WE HAVE JUST SHOWN YOU HOW SALESMEN CAN PRODUCE RETAIL SALES VOLUMES OF FROM $2,500 TO $10,000 PER MONTH; BUT, FOR THE SAKE OF THIS EXAMPLE, LET'S ASSUME THAT THE SALESMEN THAT YOU HAVE RECRUITED YOUR FIRST MONTH REACH A VOLUME OF $5,000 A WEEK, EACH, AT THE END OF THEIR FIRST MONTH. AS A FIELD MANAGER, YOU ARE WORKING AT 10% COMMISSION ON INITIAL ORDERS AND YOUR SALESMEN ARE AT 5%, LEAVING YOU 5% OVERRIDE ON INITIAL ORDERS; THIS MEANS YOU HAVE EARNED $500 DURING THAT MONTH. IN ADDITION, YOU WORK AT 3% COMMISSION ON RESERVICED ORDERS, LEAVING YOU A 2% OVERRIDE ON RESERVICED ORDERS; YOUR SALESMEN GET 1%. YOUR SALESMEN HAVE AN (ASSUMED) VOLUME OF $5,000 EACH OR A TOTAL OF $1 ,000 AFTER ONE MONTH, SO AFTER YOUR FIRST MONTH WITH GALAXY, YOU COULD BE EARNING 2% OF $10,000 PER WEEK, OR $200 PER WEEK IF YOU NEVER HIRED ANOTHER

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SALESMAN AND IF THE TWO YOU HAD HIRED IN YOUR FIRST MONTH NEVER ACQUIRED ANOTHER CUSTOMER, YOU COULD STILL EARN OVER $10,000 PER YEAR FROM THE EFFORTS OF ONLY YOUR TWO SALESMEN, AFTER ONE MONTH'S SALES.

IF YOU ARE AMBITIOUS AND WISH TO CONTINUE TO EXPAND YOUR EARNINGS, LET'S LOOK AT YOUR SECOND MONTH WITH GALAXY. ONCE AGAIN, LET'S ASSUME THAT YOU CAN ONLY RECRUIT TWO NEW SALESMEN TO ACQUIRE ACCOUNTS FOR YOU. LET US ALSO ASSUME THAT THESE NEW SALESMEN REACH A VOLUME OF ONLY $5,000 PER WEEK, EACH, IN ORDER VOLUME AFTER THEIR FIRST MONTH, AND THAT THE SALESMEN YOU HIRED YOUR PREVIOUS MONTH DO NOT ACQUIRE ANY NEW ACCOUNTS DURING THEIR SECOND MONTH. AT THIS POINT YOU STILL WOULD ONLY HAVE A NEW ORDER VOLUME OF $5,000 A WEEK OR A TOTAL NEW ORDER VOLUME OF $10,000; AT YOUR 5% OVERRIDE, YOU WOULD STILL HAVE EARNED $500 IN NEW ORDER COMMISSIONS THAT MONTH. BUT YOUR REORDER VOLUME COULD NOW BE $20,000, AND AT 2% OVERRIDE ON REORDER VOLUME, YOU COULD BE EARNING AT THE RATE OF $400 PER WEEK, STARTING AFTER YOUR SECOND MONTH.

LET'S CARRY THIS EXAMPLE INTO YOUR THIRD MONTH WITH GALAXY. ONCE AGAIN, ALL YOU RECRUIT IS TWO SALESMEN WHO ARE PRODUCING $5,000 PER WEEK, EACH, IN VOLUME, AND FOR THIS EXAMPLE <u>NONE</u> OF YOUR PREVIOUS SALESMEN ARE PRODUCING ANY NEW VOLUME. THIS WOULD GIVE YOU THE SAME INITIAL ORDER VOLUME OF $10,000 PER WEEK AT THE END OF YOUR THIRD MONTH. AT THIS POINT, YOU MIGHT WANT TO CONSIDER ELEVATING TO THE POSITION OF A DISTRIBUTOR, FOR MANY REASONS: ONE REASON IS 15% COMMISSION ON NEW ORDER VOLUME, WHICH MEANS YOU COULD RECEIVE A 10% OVERRIDE ON NEW ORDERS AND A 5% COMMISSION ON REORDERS, WHICH MEANS YOU COULD BE EARNING 4% OVERRIDE

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ON RESERVICED ORDERS. YOUR INITIAL ORDER VOLUME IS STILL ASSUMED TO BE AT A TOTAL OF $10,000, ON WHICH YOU COULD BE EARNING 10% OVERRIDE, OR $1,000 A MONTH. BUT YOUR REORDER VOLUME COULD BE $30,000 A WEEK AT THE END OF YOUR THIRD MONTH ON WHICH YOU WOULD BE EARNING 4% OVERRIDE. SO, AT THE END OF YOUR THIRD MONTH, YOU COULD BE EARNING $1,200 PER WEEK ON REORDER COMMISSIONS ALONE, EVEN IF YOU NEVER HIRED ANOTHER SALESMAN AND EVEN IF THE SIX SALESMEN YOU HAVE HIRED IN THREE MONTHS HAVE STOPPED ACQUIRING NEW ORDERS. ON THIS BASE, AND CARRYING THIS VOLUME OVER THE NEXT 12 MONTHS, MEANS YOU COULD EARN OVER $60,000 PER YEAR.

IN MY OPENING STATEMENTS I SAID THAT A NETWORK OF DISTRIBUTORS WAS NECESSARY BEFORE ACCOUNTS COULD BE PROPERLY SERVICED AND THAT THE INVENTORIES NECESSARY TO SERVICE CUSTOMERS HAD TO BE ESTABLISHED. IN ORDER TO AID GALAXY IN ACCOMPLISHING THESE GOALS, WE HAVE DEVISED AN ADDITIONAL PROGRAM WHICH IS OFFERED ON A TEMPORARY BASIS TO FIELD MANAGERS AND DISTRIBUTORS AND WHICH MAY PROVIDE A TEMPORARY INCOME.

LET'S FIRST REVIEW BRIEFLY THE ENTIRE MARKETING STRUCTURE OF GALAXY: THE FIRST POSITION IS THAT OF A SALESMAN. HE WORKS AT AN INITIAL ORDER COMMISSION OF 5% AND 1% COMMISSION ON REORDERS, AND HIS FUNCTION IS TO INTRODUCE FOOD-FONE SERVICE TO THE CONSUMER.

THE NEXT POSITION IS THAT OF A FIELD MANAGER. HE WORKS AT 10% COMMISSION ON INITIAL ORDERS AND 3% REORDER COMMISSION. FOR HIS $3,000 INVESTMENT, HE WILL BE ELIGIBLE TO RECEIVE 5% OVERRIDE ON THE INITIAL ORDER VOLUME OF HIS SALESMEN, 2% OVERRIDE ON THE REORDER VOLUME OF THESE SALESMEN, HIS FULL COMMISSION OF 10% ON INITIAL ORDERS AND 3% ON REORDERS ON HIS PERSONAL VOLUME; PLUS, HE

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IS RECEIVING TRAINING FOR HIMSELF IN THE BUSINESS ASPECTS OF GALAXY FOOD'S OPERATIONS, TRAINING FOR ALL HIS SALESMEN, AND MEMBERSHIP IN GALAXY-CHARGE, WHICH, IS USED EFFECTIVELY, CAN INSURE HIM STEADY, REPEAT BUSINESS. GALAXY-CHARGE WILL, WHEN OPERATIONAL, ENABLE HIS QUALIFIED CUSTOMERS TO ORDER THEIR SUPERMARKET ITEMS AND CHARGE THEM ON A MONTLY BASIS. HE WILL ALSO, AS PART OF HIS INITIAL INVESTMENT, BE ALLOWED UNLIMITED USE OF FOOD-FONE'S FREE DELIVERY SERVICE FOR ALL HIS CUSTOMERS. HIS CUSTOMERS WILL ALSO BE ALLOWED TO REDEEM PREMIUM COUPONS AND UNITED STATES GOVERNMENT FOOD STAMPS. FURTHERMORE, HE WILL BENEFIT FROM GALAXY'S CONTINUING ADVERTISING CAMPAIGN, WHICH WILL GENERATE CONSUMER LEADS FOR HIM.

THE HIGHEST POSITION IN GALAXY IS THAT OF A DISTRIBUTOR. HIS INVESTMENT IS $7,000, FOR WHICH HE RECEIVES A 15% COMMISSION ON INITIAL ORDERS AND 5% REORDER COMMISSION, WHICH MEANS THAT AS A DISTRIBUTOR HE RECEIVES 5% OVERRIDE ON THE INITIAL ORDER VOLUME OF ALL THE FIELD MANAGERS IN HIS ORGANIZATION, AS WELL AS 2% OVERRIDE ON ALL REORDER VOLUME.

NOW THAT YOU HAVE A BASIC UNDERSTANDING OF THE MARKETING PLAN, LET'S PUT YOU IN THE POSITION OF DISTRIBUTOR, SO THAT YOU MAY SEE AND UNDERSTAND THE TEMPORARY OPPORTUNITY FOR INCOME I JUST MENTIONED. YOU MAY, IF YOU WISH, EARN COMMISSIONS BY INTRODUCING POTENTIAL FIELD MANAGERS AND DISTRIBUTORS TO OUR PROGRAM. FOR EACH FIELD MANAGER YOU INTRODUCE YOU WILL EARN A FINDER'S FEE OF $1,050. NOW, IF THIS FIELD MANAGER DECIDES TO ELEVATE TO THE POSITION OF DISTRIBUTOR BY INVESTING AN ADDITIONAL $4,000, YOU, AS THE SPONSORING DISTRIBUTOR, WOULD RECEIVE AN ADDITIONAL COMMISSION OF $1,400, FOR A TOTAL OF $2,450. WHEN THIS ELEVATION OCCURS, THE NEW DISTRIBUTOR TAKES ALL OF HIS ACCOUNTS AND SALESMEN WITH HIM. YOU

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

THEN CEASE TO EARN INCOME FROM HIS ORGANIZATION. IF YOU, AS A DISTRIBUTOR, INTRODUCE ANOTHER DISTRIBUTOR, YOU EARN THE FULL $2,450 FINDER'S FEE AT THAT TIME. HOWEVER, YOU WILL NOT RECEIVE OVERRIDES ON THE NEW DISTRIBUTOR OR HIS ORGANIZATION. IF ONE OF YOUR FIELD MANAGERS INTRODUCES ANOTHER NEW FIELD MANAGER, HE WILL EARN A $700 FINDER'S FEE, AND YOU, AS THE SPONSORING DISTRIBUTOR, WOULD RECEIVE A $350 OVERRIDE, PLUS THE NEW FIELD MANAGER WOULD NOW BE IN YOUR ORGANIZATION AND YOU WOULD BE ENTITLED TO THE NORMAL RETAIL OVERRIDES ON THIS NEW FIELD MANAGER'S ORGANIZATION. SHOULD ONE OF YOUR FIELD MANAGERS INTRODUCE A NEW DISTRIBUTOR, YOUR FIELD MANAGER WOULD RECEIVE A $700 FINDER'S FEE AND YOU, AS THE SPONSORING DISTRIBUTOR, WILL RECEIVE THE BALANCE OF THE FINDER'S FEE OF $1,750.

LADIES AND GENTLEMEN, I FEEL SURE THAT AFTER YOU UNDERSTAND OUR MARKETING PROGRAM AND THE FANTASTIC SERVICE THAT WE CAN OFFER TO THE CONSUMER, YOU WILL WANT TO JOIN US ON THE ROAD TO SUCCESS.

AT THIS TIME, WE WISH TO EMPHASIZE THAT GALAXY FOODS, INC. IS NOT OFFERING FOR SALE ANY STOCK OR SECURITIES FOR THE INVESTMENTS DISCUSSED EARLIER. IN RETURN FOR THE INVESTMENT, AN INDIVIDUAL IS RECEIVING A FRANCHISE WHICH WILL ENABLE HIM TO PARTICIPATE IN GALAXY'S FOOD-FONE AND ALLIED PROGRAMS, AND ACQUIRE CUSTOMERS FOR GALAXY'S FOOD OPERATIONS. INVESTMENTS ARE AVAILABLE ONLY TO RESIDENTS OF NEW YORK STATE.

INTRODUCE GUEST SPEAKER

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

GALAXY FOODS INC.
#1
1929
EVERYONE'S GOT TO EAT

2ND SPEAKER

20 X 5 = 100 X $25 = $2500 - 5% = $125

20 X 5 = 100 X $25 = $\frac{2500}{5000}$ - 5% = $125 + $25 @ 1% = $150

20 X 5 = 100 X $25 = $\frac{2500}{7500}$ - 5% = $125 + $50 @ 1% = 175

20 X 5 = 100 X $25 = 2500 - 5% = $125 + $75 @ 1% = 200

2 MONTHS - $200 A WEEK @ 1%

3RD SPEAKER

$5000 X 2 = $10,000 - 5% = $500 MO. + $200 WEEK @ 2%

$5000 X 2 = $\frac{10,000}{20,000}$ - 5% = 500 MO. + $400 WEEK @ 2%

$5000 X 2 = $\frac{10,000}{30,000}$ -10% = 1,000 MO. +$1,200 WEEK @ 4%

			INIT.	RE-ORD.		
		D	15%	5%	$7000	10% 4%
$2450	$1750					
$1400	$1400	FM	10%	3%	$3000	5% INIT. 2% RE-ORD.
$1050	$350					BUS TRNG.
	$700	S	5%	1%		SALES TRNG. GAL CHG. ADV. PROGRAM FREE DELIVERY

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

GALAXY FOODS INCORPORATED

PART II

PROCEDURES - RULES & REGULATIONS

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EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

GALAXY FOODS, INC.

DISTRIBUTORS' BUSINESS MANUAL

INTRODUCTION

THE PURPOSE OF THIS MANUAL IS TO PROVIDE DISTRIBUTORS WITH A FOUNDATION TO DO A COMPETENT JOB FOR THEMSELVES AND THEIR ORGANIZATION.

THIS MANUAL OUTLINES THE GALAXY MARKETING CONCEPT AND PROVIDES ILLUSTRATIONS OF HOW THIS REMARKABLE IDEA FUNCTIONS.

HEREIN LIES AN EXPLANATION OF A PLAN THAT COULD BRING MUCH SUCCESS TO THOSE WHO USE IT PROPERLY.

YOUR FINANCIAL SUCCESS IN GALAXY DEPENDS UPON YOUR ATTITUDE, WILLINGNESS TO WORK AND YOUR KNOWLEDGE OF OUR PROGRAM. THIS MANUAL CONTAINS MUCH OF THE KNOWLEDGE YOU SHOULD NEED.

LEARN THIS INFORMATION FULLY! DO NOT MISLEAD OR MISINFORM ANYONE ABOUT THIS CONCEPT. BEAR IN MIND THAT ONLY THROUGH HONESTY, SINCERITY, WORK AND KNOWLEDGE WILL YOU OBTAIN YOUR SUCCESS.

CHAPTER I THE TWO DISTRIBUTOR LEVELS

AN INDIVIDUAL MUST BE SPONSORED BY AN EXISTING DISTRIBUTOR IN ORDER TO BECOME A DISTRIBUTOR HIMSELF.

HE MUST COMPLETE AN APPLICATION AND AGREEMENT FORM, WHICH HIS SPONSOR MUST FORWARD TO THE COMPANY.

A DISTRIBUTOR MAY OPERATE ON ONE OF TWO LEVELS: FIELD MANAGER OR DISTRIBUTOR. THE POSITION AT WHICH ONE ENTERS GALAXY DEPENDS UPON ONE'S CAPITAL INVESTMENT AND AMBITION.

THE DISTRIBUTOR CAN SELECT HIS OWN POSITION AND MAY EARN FINDER'S FEES THROUGH INTRODUCING NEW FIELD MANAGERS AND/OR DISTRIBUTORS TO GALAXY. AT SUCH TIME AS RETAIL OPERATIONS BEGIN IN ANY AREA, THE DISTRIBUTOR MAY THEN EARN COMMISSION ON RETAIL VOLUME, BASED ON HIS PERSONAL EFFORTS AND EFFECTIVENESS IN THAT AREA. WHAT DEGREE OF SUCCESS HE ATTAINS IS DIRECTLY PROPORTIONATE TO HIS WILLINGNESS TO LEARN AND TO WORK AND HIS DESIRES AND INTERESTS.

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THE FIELD MANAGER

PROCEDURE FOR BECOMING A FIELD MANAGER:

(1) AN INDIVIDUAL MAY BECOME A FIELD MANAGER IN ONLY ONE WAY: HE INVESTS $3,000 (UPON COMPLETION OF AN APPLICATION AND AGREEMENT FORM), AND UPON NOTIFICATION OF ACCEPTANCE BY THE COMPANY, HE MAY BEGIN AS A FIELD MANAGER.

(2) HE MUST BE INTRODUCED TO GALAXY IN THIS MANNER BY A DISTRIBUTOR OR ANOTHER FIELD MANAGER; HOWEVER, HE IS REGISTERED IN THE ORGANIZATION OF THE FIRST DISTRIBUTOR ABOVE HIM ON THE ORGANIZATIONAL CHART. THE DISTRIBUTOR OR FIELD MANAGER WHO INTRODUCED HIM TO THE PROGRAM WILL RECEIVE A COMMISSION FOR HIS EFFORTS.

(3) FOR HIS INVESTMENT HE WILL RECEIVE: TRAINING PROVIDED BY GALAXY IN THE BUSINESS ASPECTS OF GALAXY; TRAINING FOR ALL SALES PERSONNEL HE RECRUITS; A FINDERS FEE OF $750 FOR SPONSORING A NEW FIELD MANAGER OR DISTRIBUTOR INTO GALAXY; 10% COMMISSION ON ALL INITIAL ORDER RETAIL VOLUME HE PERSONALLY CREATES; 3% COMMISSION ON ALL REORDER VOLUME FROM HIS PERSONALLY-ACQUIRED ACCOUNTS; FREE DELIVERY SERVICE TO ALL ACCOUNTS ACQUIRED BY HIS ORGANIZATION WITHIN DESIGNATION AS "OPERATING RETAIL TERRITORY" AND MEMBERSHIP, AT NO COST TO HIMSELF, IN GALAXY-CHARGE, WHEN OPERATIVE. HE WILL ALSO BE ALLOWED TO PARTICIPATE (AT NO CHARGE) IN GALAXY'S ADVERTISING CAMPAIGN TO GENERATE LEADS FOR RETAIL CUSTOMERS.

(4) THE FIELD MANAGERS RESPONSIBILITIES ARE:

INITIALLY, UNTIL RETAIL OPERATIONS BEGIN IN HIS AREA, HE MAY CONTRIBUTE TO GALAXY'S GROWTH BY INTRODUCING NEW FIELD MANAGERS AND/OR DISTRIBUTORS TO THE COMPANY.

HE SHOULD PERSONALLY ACQUIRE RETAIL ACCOUNTS WHEN HIS AREA, OR ANY AREA HE WISHES TO WORK IN, IS DESIGNATED BY THE COMPANY AS AN "OPERATING RETAIL TERRITORY".

THE FIELD MANAGER MAY ALSO RECRUIT SALES PERSONNEL. SINCE THESE SALES PERSONNEL WILL BE PAID THEIR COMMISSIONS THROUGH GALAXY, IT IS ESSENTIAL THAT THEIR APPLICATIONS BE FILED WITH THE COMPANY. THEY MUST ALSO ATTEND COMPANY-PROVIDED TRAINING.

THE FIELD MANAGER SHOULD MAKE CERTAIN THAT EVERYONE IN HIS ORGANIZATION HAS A THOROUGH KNOWLEDGE OF THE COMPANY'S MARKETING CONCEPT. HE SHOULD SEE THAT EVERYONE IN HIS ORGANIZATION IS INSTILLED WITH THE DESIRE TO REACH HIS FINANCIAL GOAL.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

THE FIELD MANAGER SHOULD MAKE SURE THAT HIS SALES PERSONNEL ARE AWARE OF THE ADVANTAGES OF BEING FIELD MANAGERS.

TO INSURE HIS SUCCESS, THE FIELD MANAGER SHOULD ATTEND TRAINING CLASSES, AS PROVIDED FOR HIM BY HIS INITIAL INVESTMENT.

THE FUNCTIONS OF A FIELD MANAGER ARE:

THE FIELD MANAGER EARNS PROFITS, BOTH FROM HIS OWN PERSONAL SALES AND THE VOLUME OF HIS SALES ORGANIZATION.

IN OTHER WORDS, A FIELD MANAGER WHO RECRUITS 10 SALES PERSONNEL IN A MONTH, WHO EACH ACQUIRE 40 ACCOUNTS DURING THE MONTH, AND ASSUMING THAT EACH ACCOUNT ORDERS $25.00 PER WEEK, WILL HAVE AN ORGANIZATIONAL REORDER VOLUME OF $10,000 PER WEEK BEGINNING IN HIS FIFTH WEEK.

SINCE HIS SALES PERSONNEL RECEIVE 1% REORDER COMMISSION, AND HE RECEIVES 3% REORDER COMMISSION, HE WOULD THEN BE RECEIVING A 2% OVERRIDE, AND 2% OF $10,000 PER WEEK IS $200 PER WEEK. THIS INCOME WOULD CONTINUE EVEN IF NO NEW ACCOUNTS WERE ACQUIRED, AS LONG AS THE EXISTING ACCOUNTS AVAIL THEMSELVES OF GALAXY'S SERVICES.

WHEN A FIELD MANAGER ELEVATES TO THE POSITION OF A DISTRIBUTOR, HIS ACCOUNTS AND THOSE OF HIS SALES ORGANIZATION, REMAIN IN HIS ORGANIZATION.

THE DISTRIBUTOR

PROCEDURE FOR BECOMING A DISTRIBUTOR:

AN INDIVIDUAL MAY BECOME A DISTRIBUTOR BY INVESTING $7,000 AND COMPLETING THE APPLICATION AND AGREEMENT FORM; UPON NOTIFICATION OF ACCEPTANCE BY THE COMPANY, HE MAY BEGIN AS A DISTRIBUTOR. A FIELD MANAGER MAY ELEVATE TO THE POSITION OF DISTRIBUTOR BY INVESTING AN ADDITIONAL $4,000 AND BY COMPLETING THE FIELD MANAGER'S ELEVATION FORM (GAL 101). HE MUST REALIZE THAT AS A DISTRIBUTOR HE IS IN A HIGH POSITION OF LEADERSHIP IN THE FIELD AND THAT HIS CONDUCT AND ACTIONS MUST EXEMPLIFY THE BASIC CONCEPTS OF GALAXY.

THE DISTRIBUTORS RESPONSIBILITIES ARE:

THE DISTRIBUTOR IS CONSIDERED TO BE THE LINK BETWEEN THE CORPORATION AND THE PUBLIC.

THE DISTRIBUTOR MUST REFLECT THE ATTITUDES OF THE COMPANY CONCERNING THE FREE ENTERPRISE SYSTEM AND HONESTY AND SINCERITY IN DEALING WITH PEOPLE.

THE DISTRIBUTOR, BECAUSE HE IS IN THIS POSITION OF LEADERSHIP, SHOULD BE THOROUGHLY VERSED IN ALL PHASES OF THE PROGRAM, BOTH THE RETAIL AND BUSINESS ASPECTS.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

THE DISTRIBUTOR SHOULD CONTINUE TO TRAIN HIMSELF FROM ALL COMPANY MANUALS AND LITERATURE, AND HE SHOULD PERIODICALLY ATTEND DISTRIBUTOR'S TRAINING CLASSES TO KEEP ABREAST OF ALL NEW AND DEVELOPING CHARACTERISTICS OF THE FOOD INDUSTRY AND GALAXY'S OPERATIONS.

THE RESPONSIBILITIES OF THE FIELD MANAGER APPLY TO A DISTRIBUTOR, BUT THERE ARE GREATER RESPONSIBILITIES AND GREATER REWARDS FOR THIS TOP POSITION.

ONLY A DISTRIBUTOR MAY OBTAIN A COMPANY POSITION, SO IT IS THE RESPONSIBILITY OF THE DISTRIBUTORS IN THE FIELD TO AID ALL FIELD MANAGERS TO ACHIEVE THE POSITION OF DISTRIBUTOR SHOULD THEY SO DESIRE.

THE FUNCTIONS OF A DISTRIBUTOR:

THE DISTRIBUTOR EARNS PROFITS, BOTH, FROM HIS PERSONAL SALES AND THE VOLUME OF HIS SALES ORGANIZATION.

IN OTHER WORDS, A DISTRIBUTOR WHO RECRUITS 10 SALES PERSONNEL IN A MONTH, EACH OF WHOM ACQUIRES 40 ACCOUNTS DURING THAT MONTH AND ASSUMING THAT EACH ACCOUNT ORDERS $25.00 PER WEEK, WILL HAVE AN ORGANIZATIONAL REORDER VOLUME OF $10,000 PER WEEK, BEGINNING HIS FIFTH WEEK.

SINCE HIS SALES PERSONNEL RECEIVE 1% REORDER COMMISSION AND HE RECEIVES 5% REORDER COMMISSION, HE THEN WOULD BE RECEIVING A 4% OVERRIDE, AND 4% OF $10,000 PER WEEK IS $400 PER WEEK. THIS INCOME WOULD CONTINUE EVEN IF NO NEW ACCOUNTS WERE ACQUIRED, AS LONG AS THE EXISTING ACCOUNTS AVAIL THEMSELVES OF GALAXY'S SERVICES.

THE DISTRIBUTOR SHOULD ALSO HELP FOSTER GALAXY'S GROWTH BY INTRODUCING NEW FIELD MANAGERS AND/OR DISTRIBUTORS. WHEN THE DISTRIBUTOR INTRODUCES A FIELD MANAGER INTO THE PROGRAM, HE WILL RECEIVE A ONE-TIME FINDERS FEE FROM GALAXY OF $1,050; WHEN THAT NEW FIELD MANAGER SEES THE ADVANTAGES OF BEING A DISTRIBUTOR AND MAKES THE ADDITIONAL INVESTMENT, THE ORIGINAL SPONSORING DISTRIBUTOR WILL RECEIVE AN ADDITIONAL $1,400. WHEN A FIELD MANAGER SPONSORS A NEW FIELD MANAGER INTO GALAXY, THE ORIGINAL SPONSORING DISTRIBUTOR WILL RECEIVE $350 INITIALLY AND AN ADDITIONAL $1,400 WHEN THAT NEW FIELD MANAGER BECOMES A DISTRIBUTOR.

THE DISTRIBUTOR ALSO EARNS 5% OVERRIDE ON ALL THE INITIAL ORDER VOLUME OF HIS FIELD MANAGERS AND 2% OVERRIDE ON ALL THEIR RETAIL REORDER BUSINESS. HE IS PAID THESE COMMISSIONS MONTHLY.

THUS, WHEN THE ORGANIZATION OF A FIELD MANAGER ATTAINS A REORDER VOLUME OF $10,000 PER WEEK, THE DISTRIBUTOR-SPONSOR OF HIS ORGANIZATION RECEIVES A COMMISSION CHECK FOR $800 OR 2% OF $10,000 PER WEEK, AT THE END OF A MONTH.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

IF POSSIBLE, THE DISTRIBUTOR SHOULD INSTILL IN EACH OF HIS FIELD MANAGERS THE DESIRE TO BECOME A DISTRIBUTOR.

THE DISTRIBUTOR SHOULD REMIND HIS FIELD MANAGERS THAT ALL THE FIELD MANAGERSHIPS THEY CREATE BELONG TO THE DISTRIBUTOR. HE SHOULD INFORM THEM OF THE ADVANTAGES OF BEING A DISTRIBUTOR.

THE SPONSORING DISTRIBUTOR MUST RELEASE A FIELD MANAGER WHO WISHES TO ELEVATE TO THE POSITION OF DISTRIBUTOR. HE CO-OPERATES IN THIS RELEASE B' ACCEPTING THE FIELD MANAGERS ELEVATION FORM (GAL 101) AND A CERTIFIED OR CASHIER'S CHECK FOR $4,000 MADE PAYABLE TO GALAXY FOODS, INC.

COMBINATION OF SPONSORSHIP

ALTHOUGH THERE ARE THREE DISTRIBUTORSHIP LEVELS OF GALAXY, ALL OF THEM MAY NOT EXIST IN EVERY ORGANIZATION. IN OTHER WORDS, A SALESMAN MAY BE SPONSORED BY A DISTRIBUTOR WITH NO FIELD MANAGER INVOLVED.

ON ANY ORGANIZATIONAL CHART, WHEN YOU TRACE THE LINE OF SPONSORSHIP FROM THE DISTRIBUTOR TO THE SALESMAN, YOU WILL FIND ONLY TWO DISTINCT ARRANGEMENTS:

OWNERSHIP OF DISTRIBUTORS:

SHOULD A SITUATION OCCUR IN WHICH TWO DISTRIBUTORS ARE ATTEMPTING TO RECRUIT THE SAME INDIVIDUAL, THE SOLUTION SHOULD BE CLEARLY UNDERSTOOD: AN INVITATION TO AN OPPORTUNITY PRESENTATION, (SUCH AS A PHONE CALL OR LETTER), DOES NOT ENTITLE THE SOLICITOR TO THE GUEST. ANY NUMBER OF DISTRIBUTORS MAY INVITE THE SAME GUEST TO A PRESENTATION.

THIS IS WHY YOU SHOULD PICK UP YOUR GUEST AND BRING HIM TO THE PRESENTATION. THIS ACTION REMOVES ALL DOUBT AS TO WHO IS SPONSORING THE GUEST. WHEN SOMEONE ELSE BRINGS A GUEST TO THE PRESENTATION WHOM YOU HAVE INVITED, HAVE THE GOOD SENSE TO LEAVE THE GUEST ALONE, UNLESS YOU ARE ASKED TO HELP THE SPONSOR. AT ANY RATE, THE GUEST HAS THE FINAL CHOICE AS TO WHOM HIS SPONSOR WILL BE.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

THE NEW DISTRIBUTOR BELONGS TO THE ONE WHO GETS HIS SIGNATURE ON THE APPLICATION AND AGREEMENT FORM AND OBTAINS HIS INVESTMENT. BUT NEVER YIELD TO THE TEMPTATION OF TRYING TO SPONSOR A GUEST WHO BELONGS TO ANOTHER DISTRIBUTOR. WHEN THIS TYPE OF CASE IS PROVEN BEFORE THE GRIEVANCE COMMITTEE, IT IS GROUNDS FOR TERMINATION OF THE DISTRIBUTORSHIP OF THE INDIVIDUAL WHO'S AT FAULT.

THE DISTRIBUTORS ASSOCIATION:

DEFINITION: THE ASSOCIATION IS A GROUP OF DISTRIBUTORS AND FIELD MANAGERS IN A GIVEN AREA, ACTING IN A VOLUNTARY CO-OPERATIVE EFFORT TO PARTICIPATE IN THE SHARING OF RECRUITING COSTS.

SUGGESTED PROCEDURES FOR THE FORMATION OF AN ASSOCIATION: FIVE OR MORE DISTRIBUTORS AND FIELD MANAGERS IN THE SAME GENERAL AREA MAY FORM AN ASSOCIATION FOR THE PURPOSE OF PROVIDING OPPORTUNITY MEETING LOCATIONS, AN OFFICE OUT OF WHICH TO CONDUCT BUSINESS AND/ OR FOR THE PURPOSE OF ESTABLISHING FINE COMMUNICATIONS BETWEEN THE DISTRIBUTORS AND THE COMPANY.

GALAXY MUST BE INFORMED, IN WRITING, ABOUT THE FORMATION OF AN ASSOCIATION. THE PROPOSED MEMBERS MUST BE IDENTIFIED BY LISTING THEIR NAMES, ADDRESSES, STATUS (DISTRIBUTOR OR FIELD MANAGER) AND SOCIAL SECURITY NUMBERS.

GALAXY MUST BE INFORMED OF THE SCHEDULE AND LOCATION OF OPPORTUNITY PRESENTATIONS AND BUSINESS TRAINING MEETINGS. THE PROPOSED ASSOCIATION MEMBERS SHOULD THEN CONTACT GALAXY FOR APPROVAL OF THE ASSOCIATION.

GALAXY RECOMMENDS THAT A PRESIDENT AND TREASURER BE ELECTED, THAT DUES BE COLLECTED AND THAT BUSINESS MEETINGS BE HELD TO DETERMINE WAYS OF IMPROVING THE EARNING CAPACITY OF THE MEMBERS OF THE ASSOCIATION.

GALAXY RECOMMENDS, ALSO, THAT THE ASSOCIATION'S FIXED MONTHLY DUES BE BASED ON THE ESTIMATED COSTS TO BE INCURRED.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

RULES AND REGULATIONS

OF

GALAXY FOODS, INC.

THESE RULES AND REGULATIONS ARE HEREBY INCORPORATED INTO THE FRANCHISE AGREEMENT BY REFERENCE; SECTION 2, PARAGRAPH A.

(1) DISTRIBUTOR AGREES TO UPHOLD AND ABIDE BY ALL RULES AND REGULATIONS (AND ALL SUBSEQUENT CHANGES) ESTABLISHED BY THE COMPANY.

(2) DISTRIBUTOR IS RESPONSIBLE FOR ALL RULES AND REGULATIONS NOT ENUMERATED HERE BUT WHICH ARE CONTAINED IN OTHER COMPANY PUBLICATIONS.

(3) DISTRIBUTOR AGREES TO MAKE ONLY THOSE CLAIMS REGARDING PROPOSED SERVICE THAT ARE AUTHORIZED IN WRITING BY THE COMPANY. FURTHER, THE DISTRIBUTOR AGREES NEVER TO GIVE FALSE OR MISLEADING INFORMATION CONCERNING THE SERVICE OR THE COMPANY, AND TO HOLD THE COMPANY HARMLESS FROM ANY CLAIM FOR DAMAGES RESULTING FROM ANY SUCH MISREPRESENTATION.

(4) DISTRIBUTOR AGREES NEVER TO STATE OR IMPLY, EITHER BY ANY ACTS OR REPRESENTATION, THAT HE IS AN EMPLOYEE OR AGENT OF THE COMPANY. DISTRIBUTOR MUST CLEARLY INDICATE HIS STATUS AS AN INDEPENDENT CONTRACTOR ON ALL BUSINESS TRANSACTIONS AND FORMS.

(5) DISTRIBUTOR AGREES TO OBTAIN PRIOR WRITTEN APPROVAL FROM GALAXY FOR ANY PROMOTION OR ADVERTISING OF THE SERVICE OR HIS DISTRIBUTORSHIP.

(6) DISTRIBUTOR AGREES NOT TO USE THE NAME "GALAXY FOODS, INC." ON OR IN ANY ADVERTISING OF HIS DISTRIBUTORSHIP WITHOUT MAKING IT CLEAR THAT HIS STATUS IS THAT OF INDEPENDENT DISTRIBUTOR OF THIS COMPANY. THE TERM "INDEPENDENT DISTRIBUTOR" MUST BE USED ON ALL BUSINESS CARDS AND ADVERTISING.

(7) NO ONE IS AN AUTHORIZED DISTRIBUTOR UNTIL THE COMPANY HAS ACCEPTED INTO ITS RECORDS AN APPLICATION AND AGREEMENT FORM SIGNED BY THE INDIVIDUAL.

(8) DISTRIBUTOR AGREES NOT TO REPRODUCE OR DUPLICATE ANY SALES AIDS OR LITERATURE BEING SOLD BY THE COMPANY WITHOUT PRIOR WRITTEN APPROVAL FROM THE COMPANY.

(9) DISTRIBUTOR AGREES NOT TO ENTER INTO ANY BUSINESS TRANSACTION WHICH WILL OBLIGATE GALAXY FOODS, INC. IN ANY MANNER. GALAXY WILL NOT ASSUME LIABILITY FOR ANY DEBTS INCURRED BY UNAUTHORIZED INDIVIDUALS.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

RULES AND REGULATIONS CONTINUED

(10) DISTRIBUTOR AGREES NOT TO TRANSFER TO ANOTHER ORGANIZATION WITHOUT THE PRIOR WRITTEN CONSENT OF ALL DISTRIBUTORS (ABOVE HIM IN HIS ORGANIZATION), AND THE COMPANY.

(11) A FIELD MANAGER MAY NOT SPONSOR OR CO-SPONSOR ANY NEW DISTRIBUTOR OR FIELD MANAGER INTO THE BUSINESS IN ASSOCIATION WITH ANY DISTRIBUTOR, OTHER THAN HIS ORIGINAL SPONSORING DISTRIBUTOR, NOR MAY HE MAKE A DIVISION OF PROFITS, ASSETS OR NEW RECRUITS IN VIOLATION OF THE GALAXY MARKETING CONCEPT.

(12) DISTRIBUTOR UNDERSTANDS THAT A VIOLATION OF ANY COMPANY RULE OR REGULATION CONSTITUTES GROUNDS FOR IMMEDIATE TERMINATION BY THE COMPANY OF HIS STATUS AS A DISTRIBUTOR. ANY ACT OR INVOLVEMENT OF A DISTRIBUTOR, WHICH IS CONSIDERED BY THE BOARD OF DIRECTORS TO BE HARMFUL TO THE COMPANY, SHALL CONSTITUTE GROUNDS FOR IMMEDIATE TERMINATION OF HIS DISTRIBUTOR STATUS.

(13) GALAXY RECOGNIZES A DISTRIBUTORSHIP AS AN INDIVIDUAL. WHETHER THE DISTRIBUTORSHIP IS A PERSON, PARTNERSHIP, CORPORATION, OR SOME OTHER BUSINESS ASSOCIATION. A CORPORATION CANNOT BECOME A GALAXY DISTRIBUTOR, BUT INDIVIDUAL DISTRIBUTORS MAY CONDUCT BUSINESS THROUGH A CORPORATION.

(14) IF A DISTRIBUTOR LOSES HIS STATUS AS A DISTRIBUTOR FOR ANY REASON HIS ORGANIZATION BECOMES A PART OF THE ORGANIZATION OF THE DISTRIBUTOR IMMEDIATELY PRECEDING HIM ON THE ORGANIZATIONAL CHART.

(15) PARTIES TO THE DISTRIBUTOR APPLICATION AND AGREEMENT AGREE THAT THE APPLICATION CONSTITUTES A CONTRACT AND IS GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

(16) DISTRIBUTOR AGREES TO INTRODUCE, OR ALLOW TO BE INTRODUCED, TO HIS ACCOUNTS OR ANY ACCOUNTS IN HIS ORGANIZATION, NO MATTER BY WHOM ACQUIRED, ONLY SUCH PRODUCTS AND/OR SERVICES AS ARE OFFERED BY GALAXY FOODS, INC. OR ANY OF ITS AFFILIATED COMPANIES.

(17) DISTRIBUTOR AGREES THAT ALL PERSONAL ORDERS TO THE COMPANY FOR ANY MERCHANDISE OR SERVICES SHALL BE ACCOMPANIED BY A CASHIERS CHECK OR THE EQUIVALENT METHOD OF PAYMENT.

(18) DISTRIBUTOR AGREES NOT TO RECRUIT OR SPONSOR ANY OTHER GALAXY DISTRIBUTOR INTO ANY VENTURE WHICH WILL HINDER THE EFFECTIVE EXECUTION OF HIS DISTRIBUTORSHIP.

(19) DISTRIBUTOR AGREES TO HAVE A FINANCIAL INTEREST IN ONLY ONE GALAXY DISTRIBUTORSHIP AT A TIME. DISTRIBUTOR UNDERSTANDS THAT HE CANNOT BE A PART OF TWO SEPARATE DISTRIBUTORSHIPS.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

(20) DISTRIBUTOR AGREES THAT GALAXY'S OBLIGATION TO PROVIDE DELIVERY TO CUSTOMERS IS LIMITED TO ANY AND ALL AREAS DESIGNATED BY GALAXY AS AN "OPERATING RETAIL TERRITORY" AND TO THE COMPANY'S CAPACITY TO DELIVERY WITHIN THE AREA SO DESIGNATED.

(21) GALAXY SHALL DO ALL IN ITS POWER TO COMMENCE RETAIL OPERATIONS. SHOULD THE "OPERATING RETAIL TERRITORY" (CONSISTING OF FROM 8,000 TO 12,000 CUSTOMERS) NOT HAVE BEGUN OPERATIONS BY JUNE 30, 1973, GALAXY AGREES TO:

A. IF FEASIBLE, CONTINUE IN THE EFFORT TO ESTABLISH THE FIRST RETAIL OPERATION.

B. GIVE THE OPTION TO THOSE INDIVIDUALS WHO WISH TO SELL THEIR DISTRIBUTORSHIPS BACK TO GALAXY, AT AN AMOUNT EQUAL TO THE ORIGINAL PURCHASE PRICE LESS COMMISSIONS PAID AGAINST IT, LESS TEN (10%) PERCENT FOR HANDLING COSTS AND INTERIM OPERATING EXPENSES. THOSE INDIVIDUALS WISHING TO SELL MUST NOTIFY THE COMPANY, IN WRITING, AFTER THE ABOVE-MENTIONED DATE. THE COMPANY SHALL COMPLETE THE RE-PURCHASE WITHIN SIXTY (60) DAYS AFTER RECEIVING SUCH NOTIFICATION.

(22) GALAXY AGREES TO ASSUME ALL RESPONSIBILITY FOR PRODUCT LIABILITY AND THERE SHALL BE NO RECOURSE TO ANY SALESMAN, FIELD MANAGER OR DISTRIBUTOR FOR ANY CAUSE OF ACTION DUE TO SPOILAGE.

(23) DISTRIBUTOR AGREES TO COMPLETE THE BASIC BUSINESS MANAGEMENT COURSE WITHIN SEVENTY-FIVE (75) DAYS OF REGISTERING WITH THE COMPANY. SHOULD THE DISTRIBUTOR NOT COMPLETE SAID TRAINING, ANY COMMISSIONS EARNED AFTER THE SEVENTY-FIVE (75) DAY PERIOD MAY BE WITHHELD BY GALAXY UNTIL SUCH TIME AS THE COURSE IS COMPLETED.

(24) THE COMMISSION SCHEDULE FOR DISTRIBUTORS, FIELD MANAGERS AND SALESMEN IS AS FOLLOWS:

A.	INITIAL ORDERS	D-15%	FM-10%	S-5%
B.	RE-ORDERS	D- 5%	FM- 3%	S-1%

THERE IS NO MINIMUM WEEKLY, MONTHLY OR YEARLY VOLUME REQUIREMENT FOR DISTRIBUTORS OR FIELD MANAGERS, HOWEVER, THERE IS A MINIMUM REQUIREMENT OF 30 NEW ORDERS PER CALENDAR QUARTER FOR SALESMEN, IN ORDER FOR THEM TO RECEIVE THEIR 1% REORDER OVERRIDE. IN THE EVENT THAT THE SALESMAN DOES NOT MEET THIS REQUIREMENT, HE WILL BE PLACED ON INACTIVE STATUS BY THE COMPANY AND HIS 1% REORDER OVERRRIDE WILL REVERT TO GALAXY FOODS, INC. THE DISTRIBUTORS AND/OR FIELD MANAGERS WILL CONTINUE TO RECEIVE THEIR RESPECTIVE COMMISSIONS, WHETHER OR NOT THE SALESMAN IS OR CONTINUES TO BE ACTIVE. SHOULD THE SALESMAN RETURN TO ACTIVE STATUS, HE WILL RECEIVE HIS OVERRIDES ONLY ON BUSINESS GENERATED <u>SUBSEQUENT</u> TO HIS RETURN TO ACTIVE STATUS.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY

(25) SIX MONTHS SUBSEQUENT TO THE COMMENCEMENT OF FULL SCALE RETAIL OPERATIONS, DISTRIBUTORS AND FIELD MANAGERS, REGARDLESS OF THEIR DATE OF ENTRY INTO GALAXY'S PROGRAM, WILL BE PERMITTED TO EXERCISE GALAXY FOODS "FINAL BUY-BACK OPTION". DISTRIBUTORS AND FIELD MANAGERS WILL BE NOTIFIED OF THEIR OPTION TO SELL THEIR DISTRIBUTORSHIP BACK TO GALAXY FOODS, INC. AT THEIR ORIGINAL PURCHASE PRICE, LESS ANY COMMISSIONS EARNED. DISTRIBUTORS WILL BE GIVEN 30 DAYS FROM THE DATE OF NOTIFICATION TO RESPOND TO THE COMPANY OFFER. A LACK OF RESPONSE WILL BE DEEMED BY THE COMPANY TO BE A DECISION TO REMAIN ON ACTIVE STATUS WITH THE COMPANY. A NOTIFICATION OF THE DESIRE TO EXERCISE THE OPTION WILL BE FOLLOWED BY AN INTERVIEW WITH THE COMPANY. IF THE SITUATION CANNOT BE CORRECTED TO THE SATISFACTION OF BOTH THE COMPANY AND THE FIELD MANAGER OR DISTRIBUTOR, SIXY DAYS HENCE, THE BUY-BACK WILL BE EXECUTED. THE DECISION SHALL BE BINDING AND FINAL ON BOTH PARTIES.

ALL APPLICATIONS RECEIVED BY GALAXY MUST CONTAIN THE FOLLOWING INFORMATION: (A) STATE, (B) QUOTA FOR STATE, (C) TOTAL SOLD IN STATE, (D) TOTAL POSITIONS REMAINING.

THE INFORMATION CONTAINED IN YOUR DISTRIBUTOR'S BUSINESS MANUAL ONLY OUTLINES THE COMPANY'S REGULATIONS AND METHOD OF OPERATION, AND IS SUBJECT TO AMENDMENTS AND/OR CHANGE.

READ CAREFULLY THE OPPORTUNITY PRESENTATION OFFERED IN THE VERY BEGINNING OF THIS MANUAL, FOR ONLY BY YOUR SPEAKING IN FRONT OF PROSPECTIVE INVESTORS WILL THE COMPANY BE ABLE TO RECOGNIZE YOUR LEADERSHIP ABILITY. THEREFORE, IT IS SUGGESTED THAT YOU COMMIT THIS PROGRAM TO MEMORY AND VOLUNTEER WHEN THE CALL COMES FOR SPEAKERS.

(NOTE) THIS MANUAL SUPERCEDES ALL PREVIOUS MANUALS

EXHIBIT B, ANNEXED TO AFFIDAVIT OF HARRY L. GARMANSKY.

IF ARE YOU READY TO EARN $50,000 PER YEAR?

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(An Equal Opportunity Business Oppty.)

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ANSWER.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

ANSWER

GALAXY FOODS, INC., ARTHUR LIEBERMAN, a/k/a ARTY LEE, RALPH AVNI, CHARLES HOROWITZ, BRUCE KATZ, STEVEN ROTH, MARK GLAZER, IRWIN DONALD KIRSCHENBLATT, a/k/a DONALD KIRSCH, GEORGE PADILLA, ARTHUR SHEVACK,

Defendants.

Defendants, IRWIN DONALD KIRSCHENBLATT a/k/a DONALD KIRSCH and ARTHUR SHEVACK, appearing herein by GOIDEL & GOIDEL, their attorneys, respectfully answer plaintiff's complaint as follows:

FIRST: Denies each and every allegation contained in Paragraph designated "1" of the plaintiff's complaint as relates to them; and lacks sufficient knowledge or information to form a belief as to the truth of the allegation contained in paragraph designated "1" as relates to the other co-defendants.

SECOND: Defendants lack sufficient knowledge or information to form a belief as to the allegations contained in paragraphs designated "2", "3". and "4".

ANSWER

THIRD: Denies each and every allegation contained in paragraphs designated "5" and "6" of the plaintiff's complaint.

FOURTH: Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph "7" of the plaintiff's complaint except admit that, upon information and belief, the defendant GALAXY was incorporated in the State of New York on September 2, 1971, does maintain its place of business as stated, and did purport to market food and other items through distributors.

FIFTH: Defendants lack knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "8", "9", "10", "11" and "12", of the plaintiff's complaint except admit that the defendants named in said paragraphs were associated, either as officers, directors or shareholders of the defendant corporation at some time during the existence of said corporation.

SIXTH: Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "15" of the plaintiff's complaint except admit that the defendant PADILLA was at some time associated with the defendant corporation but the defendants SHEVACK and KIRSCHENBLATT deny knowledge of the nature of his relationship.

ANSWER

ANSWERING PLAINTIFF'S FIRST CAUSE OF ACTION

SEVENTH: Defendants repeat, reiterate and reallege each and every answer to the plaintiff's complaint heretofore set forth in paragraphs designated "1" through "6" of their answer and further respond to the plaintiff's complaint as follows:

EIGHTH: Defendants deny each and every allegation contained in paragraph designated "18" of the plaintiff's complaint.

NINTH: Defendants deny each and every allegation contained in paragraph designated "20" and "21" as same relates to them; and as relates to the other defendants in the within action, these defendants lack sufficient knowledge or information to form a belief as to the truth of said allegations as relates to said other defendants.

TENTH: Defendants deny each and every allegation contained in paragraph designated "22" as same relates to them; except, these defendants admit that there were various types of distributorships or franchisees, that the cost for same differed, that the commission paid on account thereof and that they did derive some financial benefit from the defendant corporation on account of the sale by them of distributorships

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or franchisees; and these defendants deny knowledge or information sufficient to form a belief as to the truth of said allegations to the extent that same may relate to any other party defendant in the within action.

ELEVENTH: Defendants deny each and every allegation contained in paragraph designated "23" except admit that there was such meetings known as "presentation" meetings and "opportunity" meetings; and that in addition there were certain meetings referred to as "Sunday step'up " meetings; but as relates to the alleged atmosphere created at such meetings, these defendants deny having contributed in any manner to same; and as relates to the utilization of specific references to the amount of monies that could be earned, these defendants specifically deny having participated in same; and as relates to the other defendants in the within action, these defendants deny knowledge or information sufficient to form a belief as to each and every allegation appertaining to said defendants.

TWELFTH: Defendants deny each and every allegation of the plaintiff's complaint contained in paragraph "24" to the extent that same applies to them; except these defendants

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admit that there were such meetings known as "opportunity meetings and that there were such meetings known as "Sunday step-up" meetings; and as relates to the defendant KIRSCHENBLATT, the defendant KIRSCHENBLATT acknowledges that he did participate in several of the early meetings referred to above; but said defendant specifically denies that he endeavored to mislead or otherwise act in a manner of impropriety; and further, MR. KIRSCHENBLATT denies that he ever made any fraudulent, false or improper statement at said meetings, nor requested, aided or abetted any cheering, applauding or other unprofessional conduct; and these defendants deny any knowledge or information sufficient to form a belief as to the allegation contained in said paragraph as same may relate to any of the other defendants in the within action.

THIRTEENTH: Defendants deny each and every allegation contained in paragraph "25" of the plaintiff's complaint except admit that there were such training sessions as referred to therein; but these defendants deny that at any of the sessions at which they were present, did any improprieties take place; and they specifically deny that they were ever advised or ever advised any one else to engage in the course of conduct outlined in the various sections of paragraph "25" as same is contained in the plaintiffs complaint; and as relates to the

other defendants, these defendants deny knowledge or information sufficient to form a belief as to the conduct attributable to such other defendants.

FOURTEENTH: Defendants deny each and every allegation contained in paragraph "26" of the plaintiff's complaint.

FIFTEENTH: Defendants deny each and every allegation contained in paragraphs "27" and "28" of the plaintiff's complaint.

SIXTEENTH: Defendants deny each and every allegation contained in paragraphs designated "29", "30", and "31" of the plaintiff's complaint.

SEVENTEENTH: Defendants deny each and every allegation contained in paragraph designated "32" of the plaintiff's complaint insofar as same relates to them; and as same relates to any other defendant in the within action, these defendants deny knowledge or information sufficient to form a belief as to the conduct of such other defendants.

EIGHTEENTH: Defendants deny each and every allegation contained in paragraphs designated "33" and "34" of the plaintiff's complaint as same relates to them; and as same relates

to any other defendant in the within action , these defendants deny knowledge or information sufficient to form a belief as to the conduct of such other defendants or of their acts as relates to the allegations contained in said paragraphs.

ANSWERING PLAINTIFF'S SECOND CAUSE OF ACTION

NINETEENTH: Defendants repeat, reiterate and reallege each and every statement heretofore set forth in their answer as contained in paragraphs designated "1" through "18" of said answer and said defendants further respond to the plaintiff's complaint as follows.

TWENTIETH: Defendants deny each and every allegation contained in paragraphs designated "35" and "37" of the plaintiff's complaint as same relates to them; and as same relates to any other defendant in the within action, these defendants deny any knowledge or information sufficient to form a belief as to the conduct of said other defendants.

TWENTY FIRST: Defendants deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "36" of the plaintiff's complaint.

ANSWER

TWENTY SECOND: Defendants deny each and every allegation contained in paragraph designated "38", "39" and "41" as same relates to them: and as same relates to any of the other defendants in the within action, these defendants deny sufficient knowledge or information to form a belief as to the truth of any statements contained therein as relates to said other defendants.

WHEREFORE, the defendants IRWIN DONALD KIRSCHENBLATT a/k/a DONALD KIRSCH and ARTHUR SHEVACK pray for judgment dismissing the plaintiff's complaint as same relates to them, together with the costs and disbursements of this proceeding.

Respectfully Submitted,

GOIDEL & GOIDEL
Attorneys for Defendants Irwin
Donald Kirschenblatt and
Arthur Shevack
P.O. Address:
127 John St.
New York, N.Y. 10038

Dated: New York, N.Y.
December 4, 1973

By _____
Alvin I. Goidel Partner

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NOTICE OF MOTION OF DEFENDANTS LIEBERMAN, AVNI AND GLAZER TO DISMISS THE COMPLAINT.

FILED
IN CLERK'S OFFICE
S DISTRICT COURT E.D. N.Y.
JAN 17 1974 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

GALAXY FOODS, INC. :
ARTHUR LIEBERMAN a/k/a ARTY LEE
RALPH AVNI :
CHARLES HOROWITZ
BRUCE KATZ :
MARK GALZER
STEVEN ROTH :
IRWIN DONALD KIRSCHENBLATT
a/k/a DONALD KIRSCH :
GEORGE PADILLA
ARTHUR SHEVACK, :

Defendants. :

----------x

73 Civil Action
No. 1742 (ERN)

NOTICE OF MOTION TO DISMISS THE COMPLAINT

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of BERT L. GUSRAE, Esq., sworn to the 9th day of January, 1974, and upon all other papers and proceedings filed and had herein, defendants Arthur Lieberman, Ralph Avni and Mark Glazer, by their attorneys, LIPKIN, GUSRAE & HELD, will move this Court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure at Courtroom 7, before the Honorable Edward P. Neaher, United States Courthouse

NOTICE OF MOTION OF DEFENDANTS LIEBERMAN, AVNI AND GLAZER TO DISMISS THE COMPLAINT

for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York on the ~~28th~~ 1st day of ~~January~~ FEBRUARY, 1974 at 2:00 in the afternoon of that day or as soon thereafter as counsel can be heard for an order dismissing the plaintiff Securities and Exchange Commission's Complaint on the grounds that this Court lacks subject matter jurisdiction and that the plaintiff has failed to state a claim upon which relief may be granted in that no security is involved and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 9, 1974

X Lipkin, Gusrae & Held
Member of the firm

LIPKIN, GUSRAE & HELD
Attorneys for defendants
Arthur Lieberman, Ralph
Avni and Mark Glazer
225 Broadway
New York, New York 10007

NOTICE OF MOTION OF DEFENDANTS LIEBERMAN, AVNI AND GLAZER TO DISMISS THE COMPLAINT

TO: Harry Garmansky, Esquire
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007

Alvan Goidel, Esq.
c/o Goidel & Goidel
127 John Street
New York, New York 10038

Simeon Soterakis, Esq.
68-14 Roosevelt Avenue
Woodside, New York

Peter Silverman, Esq.
66 Court Street
Brooklyn, New York

George Padilla
175-05 145th Drive
Springfield Gardens, New York

Bruce Katz
8520 149th Street
Howard Beach, New York

AFFIDAVIT OF BERT L. GUSRAE IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	73 Civil Action No. 1742 (ERN)
- against -	:	
	:	AFFIDAVIT
GALAXY FOODS, INC., ARTHUR LIEBERMAN a/k/a ARTY LEE RALPH AVNI CHARLES HOROWITZ BRUCE KATZ MARK GLAZER STEVEN ROTH IRWIN DONALD KIRSCHENBLATT a/k/a DONALD KIRSCH GEORGE PADILLA ARTHUR SHEVACK,	:	
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

BERT L. GUSRAE, ESQ., being duly sworn, deposes and says:

1. I am a partner in the firm of Lipkin, Gusrae & Held, attorneys for defendants Arthur Lieberman ("Lieberman"), Ralph Avni ("Avni") and Mark Glazer ("Glazer"), (hereinafter collectively referred to as "Defendants") in the above entitled action.

AFFIDAVIT OF BERT L. GUSRAE IN SUPPORT OF MOTION

2. I make this affidavit in support of Defendants' Motion to dismiss the Securities and Exchange Commission's (hereinafter referred to as "Plaintiff") Complaint on the grounds that Plaintiff has failed to state a claim upon which relief may be granted and for lack of subject matter jurisdiction in that no sale or offer to sell a security is involved in this matter.

3. This affidavit is based upon my personal examination of certain books, records, and other documents of the defendant Galaxy Foods, Inc. (hereinafter referred to as "Galaxy") and the Defendants, statements made to me by Defendants and other documents contained in the files of this matter in my office and for the purposes of this affidavit, all the factual statements made in the accompanying Memorandum of Law are incorporated herein.

4. Plaintiff on November 26, 1973 filed a Complaint in this action alleging violations of Section 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") as amended, 15 U.S.C. 77e(a), 77e(c) and 77q(a) and Section 10b of the Securities Exchange Act of 1934 ("Exchange Act") as amended, 15 U.S.C. 78j(b) and Rule 10b-5 promulgated by the Plaintiff Securities and Exchange Commission thereunder, 17C.F.R. 240.10b-5.

AFFIDAVIT OF BERT L. GUSRAE IN SUPPORT OF MOTION

5. Plaintiff essentially is contending in its Complaint that the Defendants were engaged in the unlawful offer and sale of securities in the form of interests and participations in a pyramid promotion scheme.

6. These interests and/or participations the Plaintiff contends are (a)"an investment contract(s)", (b)"certificates of interest or participations...profit sharing agreements", and (c)"Interests...commonly known as a 'security' ".

7. In short, Defendants Lieberman, Avni and Glazer contend that the arrangements made by and between Galaxy, its principals, the other defendants, and other distributors and/or field managers of Galaxy do not constitute interests which are "securities" within the meaning of the Federal Securities law.

8. The Plaintiff and Defendants agree that Galaxy sold interests to various individuals, and such interests have been labeled during the course of this action as distributorships, franchises, or field managerships.

9. As will be shown in the accompanying Memorandum of Law, the Defendants clearly did not engage in the sale of investment contracts, certificates of interest or participations in profit sharing agreements and interests commonly known as a security. And if the Court determines that, in fact, there has

AFFIDAVIT OF BERT L. GUSRAE IN SUPPORT OF MOTION

not been an offer or sale of "securities" within the meaning of the Federal Securities laws, this Court must decline jurisdiction in this matter.

10. Even a finding of gross intentional fraud, will not, in itself, give this Court jurisdiction over the subject matter of this case if a "security" is not involved.

11. Therefore, I respectfully submit that for the above reasons (as more fully expanded upon in the accompanying Memorandum of Law), the Plaintiff's Complaint should be dismissed on the grounds that this Court does not have subject matter jurisdiction, and that the Plaintiff has failed to state a claim upon which relief may be granted.

Dated: New York, New York
January 11, 1974

Bert L. Gusrae.
BERT L. GUSRAE

Sworn to before me this
11TH day of January, 1974.

Lawrence Cid
Notary Public

NOTICE OF CROSS-MOTION OF DEFENDANTS SHEVACK AND GOIDEL TO DISMISS THE COMPLAINT.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN 23 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GALAXY FOODS, INC.
ARTHUR LIEBERMAN a/k/a ARTY LEE
RALPH AVNI
CHARLES HOROWITZ
BRUCE KATZ
MARK GLAZER
STEVEN ROTH
IRWIN DONALD KIRSCHENBLATT
a/k/a DONALD KIRSCH
GEORGE PADILLA
ARTHUR SHEVACK,

Defendants.

----------X

73 Civil Action
No. 1742 (ERN)

NOTICE OF CROSS-MOTION TO DISMISS THE COMPLAINT

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of ARTHUR SHEVACK and ALVIN I. GOIDEL, sworn to the 14th day of January, 1974, and upon all other papers and proceedings filed and had herein, defendants ARTHUR SHEVACK and IRWIN DONALD KIRSCHENBLATT, by their attorneys, GOIDEL & GOIDEL, will

NOTICE OF CROSS-MOTION OF DEFENDANTS SHEVACK AND GOIDEL TO DISMISS THE COMPLAINT

move this Court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure at Courtroom 7, before the Honorable Edward R. Neaher, United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York on the 14th day of ~~January~~ February, 1974 at ~~2:00~~ 10:00 in the ~~afternoon~~ forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the plaintiff Securities and Exchange Commission's complaint on the grounds that this Court lacks subject matter jurisidction and that the plaintiff has failed to state a claim upon which relief may be granted in that no security is involved and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 14, 1974

Respectfully yours,

GOIDEL & GOIDEL
Attorneys for Defendants
Shevack & Kirschenblatt
By

ALVIN I. GOIDEL
Office & P.O. Address
127 John Street
New York, New York 10038

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NOTICE OF CROSS-MOTION OF DEFENDANTS SHEVACK AND GOIDEL TO DISMISS THE COMPLAINT

TO: HARRY GARMANSKY, ESQ.
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007

LIPKIN, CUSRAE & HELD, ESQS.
225 Broadway
New York, New York 10007

SIMEON SOTERAKIS, ESQ.
68-14 Roosevelt Avenue
Woodside, New York

PEPER SILVERMAN, ESQ.
66 Court Street
Brooklyn, New York

GEORGE PADILLA
175-05 149th Drive
Spring Gardens, New York

BRUCE KATZ
8220 149th Street
Howard Beach, New York

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AFFIDAVIT OF ARTHUR SHEVACK IN SUPPORT OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- : 73 Civil Action No. 1742 (ERN)

GALAXY FOODS, INC. :
ARTHUR LIEBERMAN a/k/a ARTY LEE AFFIDAVIT
RALPH AVNI :
CHARLES HOROWITZ
BRUCE KATZ :
MARK GLAZER
STEVEN ROTH :
IRWIN DONALD KIRSCHENBLATT
a/k/a DONALD KIRSCH :
GEORGE PADILLA
ARTHUR SHEVACK, :

Defendants. :

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ARTHUR SHEVACK, being duly sworn, deposes and says:

1. I am one of the defendants in the within proceeding and submit this affidavit in support of the instant application for an order dismissing the plaintiff's complaint for lack of jurisdiction over the subject matter.

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AFFIDAVIT OF ARTHUR SHEVACK IN SUPPORT OF CROSS-MOTION

2. It is respectfully submitted that I was a franchisee under contract with the defendant corporation having purchased a franchise from it for the sum of $5,000.00 in cash.

3. I do not, at this time, wish to argue the allegations of fraud contained in the plaintiff's complaint as same relate to me; rather, I wish to set forth the salient facts concerning my relationship with the defendant corporation and the nature of the defendant corporation's business as same bears upon the question of "securities", "investment contracts" and "risk capital".

4. It is respectfully submitted that as a franchisee, I at no time had an equity interest in the defendant corporation. Rather, I purchased a franchise for the sum of $5,000.00 recognizing that what I was purchasing was a food delivery service for the delivery of food and food products to customers whom I would solicit in connection with the retailing of products furnished by the defendant corporation.

5. It was understood that I was to perform services with regard to my own customers in the nature of soliciting them, providing them with catalogs furnished by the defendant

AFFIDAVIT OF ARTHUR SHEVACK IN SUPPORT OF CROSS-MOTION

corporation to me and marketing the various products for sale. In addition, I was to service my customers by assuring that their deliveries were made on time, that they had the latest catalogs, that the food furnished them was in fresh condition and that the delivery service was both prompt and courteous.

6. I was advised that any benefits realized by me from the solicitation of additional franchisees was limited in both time and number. Consequently, I was fully cognizant of the fact that profits realized by me were ultimately to be derived exclusively from the retailing of food which would necessitate a very active participation by me in the creation of a customer list and the sale by me of food to these individuals from the aforementioned catalogs.

7. I was further apprised of the fact, and as a businessman well knew, that my efforts with regard to my customers was not limited to the initial receipt of an order from them and that, as in any retail operation, both satisfaction of product and service was necessary to solicit further orders from them and to derive additional earnings through these orders, such earnings to be the ultimate and exclusive source of my income.

AFFIDAVIT OF ARTHUR SHEVACK IN SUPPORT OF CROSS-MOTION

8. Indeed, it should be observed that much of my time was expended in the creation of a customer list and soliciting individuals not for the purchase of franchises but for the sale and distribution of food and food products.

9. Moreover, I recognize that my right to monies was not dependent upon the ability of the defendant corporation to derive a profit from the sale of the orders placed with them by my customers, it being understood that I was to get my commission irrespective of whether the particular sale to a particular customer was profitable or not.

10. To the same extent it was clear that if the corporation made an excessive profit because of the over pricing of merchandise, my income was not dependent upon the extent of the excess profit, save to the extent that my commission would be a percentage of what was realized from that sale.

11. Indeed, it was possible that because of the monies which I had to expend out of my own pocket in travelling from place to place in search of customers, that I could derive a loss even though the corporation derived a profit. To the

same end, if my out-of-pocket expenditures were minimal, I could derive a profit while the corporation could conceivably derive a loss.

12. I respectfully submit that there is a very basic conflict between me and some of the other defendants including the corporate defendant not by virtue of the sale of securities but rather by virtue of certain conduct, which I do not desire to go into at this time, which may have been participated in by various of the co-defendants.

13. I recognize that my cause of action, if any, which exists against some of these other defendants is properly to be commenced in a State Court rather than in this Court under the guise of a "securities action".

14. Indeed, it would appear from the government's action that I am the very individual for whose benefit and in whose behalf the instant litigation was commenced.

15. To this end, I find it most difficult to comprehend why I was made a party to this proceeding when

AFFIDAVIT OF ARTHUR SHEVACK IN SUPPORT OF CROSS-MOTION

[illegible] there are more than 300 franchisees who purchased franchises from the defendant corporation and who solicited additional franchisees.

16. I respectfully urge this Court to consider that the government's purpose naming me as a co-defendant was not by virtue of my conduct in relation to the defendant GALAXY, but rather for purposes outside the scope of this litigation.

17. This action represents a prime example of governmental overreach and an attempt by the Securities and Exchange Commission to seek the assistance of a court through the means of "judicial overreach" to accomplish what the Congress of the United States has refused to regulate.

WHEREFORE, I respectfully request that the instant application be in all respects granted.

ARTHUR SHEVACK

Sworn to before me this
14th day of January, 1974

ALVIN I. GOIDEL
Notary Public, State of New York
No. 24-1409065
Qualified in Kings County
Commission Expires March 30, 1975

AFFIDAVIT OF ALVIN I. GOIDEL IN SUPPORT OF CROSS-MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -against- GALAXY FOODS, INC: ARTHUR LIEBERMAN a/k/a ARTY LEE RALPH AVNI CHARLES HOROWITZ BRUCE KATZ MARK GLAZER STEVEN ROTH IRWIN DONALD KIRSCHENBLATT a/k/a DONALD KIRSCH GEORGE PADILLA ARTHUR SHEVACK, Defendants.	73 Civil Action No. 1742 (ERN) AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ALVIN I. GOIDEL, being duly sworn, deposes and says:

1. I am a partner in the firm of GOIDEL & GOIDEL, attorneys for the defendants Arthur Shevack and Irwin Donald Kirschenblatt, herein collectively referred to as "defendants".

2. I make this affidavit in support of defendants' motion to dismiss the plaintiff's complaint on the grounds that it has failed to state a claim upon which relief may be granted

AFFIDAVIT OF ALVIN I. GOIDEL IN SUPPORT OF CROSS-MOTION

and for lack of subject matter jurisdiction in that no sale or offer of sale of any security is involved in this matter.

3. This affidavit is based upon my personal discussions with the defendants Shevack and Kirschenblatt as well as upon my examination of various written items furnished me by them.

4. Annexed hereto and made a part hereof is an affidavit of Arthur Shevack, one of the defendants, wherein he outlines the factual relationship existing between him and the defendant corporation as same bears upon the government's complaint.

5. Plaintiff claims, in its complaint, that the defendants were engaged in the unlawful offer and sale of securities in the form of interests and participations in a pyramid promotion scheme.

6. These interests and/or participations the plaintiff contends are (a) "an investment contract(s)", (b) "certificates of interest or participations...profit sharing agreements", and (c) "interests...commonly known as a 'security'".

7. As will be more appropriately demonstrated in the accompanying memorandum of law, the sale of a franchise by the defendant corporation did not constitute a sale of an equity interest nor was it an investment of risk capital by

a prospective franchisee; in brief, neither the franchisee had an equity interest in the defendant corporation nor was the defendant corporation assured of a profit through the retailing of the franchisees, even though the franchisees could derive a profit from the sale of the products furnished by the defendant corporation.

8. A reading of the plaintiff's complaint as well as its affidavits and memoranda in prior proceedings evidences an attempt to demonstrate the existence of fraud in relation to the activities of the various defendants in the promotion of the sale of franchises. This we submit is totally immaterial to the question of jurisdiction and is utilized by the plaintiff as a means of avoiding and begging the basic issue which is whether this Court possesses jurisdiction over the subject matter of this litigation.

9. Assuming, arguendo, that fraud was participated in by all or some of the defendants in relation to the promotion and sale of franchises, or even the sale of food or food products, the commencement of this action in this forum and for the relief sought is improper.

10. As more specifically outlined in the memorandum of law, federal review of this issue has repeatedly and consistently found that the sale of a franchise is not the sale of a security, an investment contract or an equity interest in a franchisor; nor is same the investment of "risk capital" as is urged by the Securities and Exchange Commission.

AFFIDAVIT OF ALVIN I. GOIDEL IN SUPPORT OF CROSS-MOTION

11. It behooves the plaintiff in this action to meet the first issue and to demonstrate to this Court that the sale of a franchise falls within the remedial legislation enacted by the Congress under the Securities Act of 1933 and/or the Securities Exchange Act of 1934.

12. The many cases cited in the memorandum lead to a contrary conclusion. We submit that the sale of a franchise to a franchisee by the defendant corporation merely entitled that franchisee to a commission on the sale of any additional franchise (which could be sold for a limited period of time and to a limited number of individuals) and to a commission on the sale of food to customers solicited and sold to by the franchisee.

13. In essence, each franchisee was established in his own independent business; his rewards, if any, were to be in consistence with the degree of his effort and his ability to sell; he was, in fact, acting as a middleman in what is generally described as a cooperative selling effort. This cooperative selling effort was to occasion the saving of money by his customers and the realization of profits to him.

14. As more specifically noted in the annexed affidavit of the defendant Shevack, it was conceivable that the profits or losses could be in reverse proportion to the profits or losses realized by the defendant corporation.

AFFIDAVIT OF ALVIN I. GOIDEL IN SUPPORT OF CROSS-MOTION

15. Certainly, and to no extent, were his profits to be determined through the exclusive and sole efforts of the defendant corporation in deriving a profit by and for itself.

16. We submit that it is for the Congress and not for the courts to amend the Securities Act of 1933 and the Securities Exchange Act of 1934.

17. Barring such amendment by Congress, it would behoove the plaintiff in this action to refrain from the institution of an action of this nature and to limit its activities in connection with those matters that do fall within the scope of the statutes.

WHEREFORE, it is respectfully submitted that the instant motion be in all respects granted and that an order issue dismissing the plaintiff's complaint on the ground that this Court does not have subject matter jurisdiction and that the plaintiff has failed to state a claim upon which relief may be granted.

ALVIN I. GOIDEL

Sworn to before me this
14th day of January, 1974

WARREN M. GOIDEL
Notary Public, State of New York
No. 41-6553618
Qualified in Queens County
Commission Expires March 30, 19

MEMORANDUM AND ORDER BY NEAHER, D. J., DENYING DEFENDANTS' MOTIONS TO DISMISS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GALAXY FOODS, INC., ARTHUR LIEBERMAN A/K/A ARTY LEE, RALPH AVAI, CHARLES HOROWITZ, BRUCE KATZ, STEVEN ROTH, MARK GLAZER, IRWIN DONALD KIRSCHENBLATT A/K/A DONALD KIRSCH, GEORGE PADILLA, ARTHUR SHEVACK,

Defendants.

73 C 1747

MEMORANDUM AND ORDER

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APPEARANCES:

WILLIAM D. MORAN, ESQ.
Regional Administrator
Attorney for Plaintiff
By HARRY L. GARMANSKY, ESQ.
(ALLAN M. LERNER, ESQ., of Counsel)

LIPKIN, GUSRAE & HELD, ESQS.
Attorneys for Defendants
Lieberman, Avai & Glazer
By BERT L. GUSRAE, ESQ.

GOIDEL & GOIDEL, ESQS.
Attorneys for Defendants
Shevack and Kirschenblatt
By ALVIN I. GOIDEL, ESQ.
(HUGH J. HELFENSTEIN, ESQ., of Counsel)

PETER R. SILVERMAN, ESQ.
Attorney for Defendant Roth

MEMORANDUM AND ORDER BY NEAHER, D. J.

NEAHER, District Judge.

This action was brought by the Securities and Exchange Commission (S.E.C.) to enjoin violations of the registration and anti-fraud provisions of the federal securities laws in connection with the individual defendants' sale of alleged "security" interests in the defendant Galaxy Foods, Inc. (Galaxy) or any other securities. As the result of an application by the S.E.C. for preliminary injunctive relief, all individual defendants have in one form or another consented to some type of preliminary restraint, pending resolution of the ultimate issues in this case.[1]

Plaintiff alleges that defendants have sold interests which amount to participations in pyramid sales or multi-level distributorship promotional schemes. Defendants do not appear to dispute plaintiff's claim that these "interests" have not been registered with the S.E.C., but do deny that they are "securities" and that defendants misrepresented material facts or failed to state material facts in their solicitation of participants. Plaintiff's conclusion that such transactions constitute violations of the federal securities laws is bottomed

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upon its view that these "interests" are in fact "securities" within the meaning of the securities laws, 15 U.S.C. §§77(b)1, 78c(a)(10).

The court has before it three motions, from various defendants, each seeking a dismissal of the action for lack of subject matter jurisdiction, F.R.Civ.P. 12(b)(1), or alternatively, for failure to state a claim upon which relief can be granted, F.R.Civ.P. 12(b)(6). Each motion argues that the court must find, as a matter of law, that none of the interests sold by defendants are "securities" as that term is defined in the federal securities laws. Plaintiff responds that as that term is defined in 15 U.S.C. §§77(b)1 and 78c(a)(10), the interests sold here come within those definitions (which for all practical purposes here are identical) because they are either (1) investment contracts, (2) certificates of interest or participation in a profit sharing agreement, or (3) interests commonly known as a security.

With respect to the motion directed to the court's asserted lack of subject matter jurisdiction, there is no doubt that this court has jurisdiction over actions brought by the S.E.C. seeking injunctive relief

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for alleged violations of the federal securities laws. 15 U.S.C. §§77v(a), 78aa. If the S.E.C. can fairly be said to have stated a claim under those laws, there is no doubt that the court has jurisdiction. If the S.E.C. has failed to state such a claim, the proper grounds for relief is not an attack upon the court's jurisdiction but a Rule 12(b)(6) dismissal. Hence the jurisdictional motion is not independent and at best can be said to turn on the success or failure of the Rule 12(b)(6) motion. See Globus, Inc. v. Jaroff, 266 F. Supp. 524, 527, 531 (S.D.N.Y. 1967).

Turning, then, directly to the motion to dismiss for failure to state a claim, it is well established that in order to grant such a motion it must appear beyond doubt that the S.E.C. can prove no set of facts in support of its claim which would entitle it to relief. Cruz v. Beto, 405 U.S. 319, 322 (1972); Conley v. Gibson, 355 U.S. 41, 45-46 (1957); 2A J. Moore, Federal Practice ¶12.08 (2d ed. 1968). Therefore, the court must accept as true the description of the transactions and conduct as stated in the S.E.C. complaint for the purpose of determining whether the interests dealt in by defendants could not as

a matter of law be found to be "securities."

The paragraphs in the complaint bearing most crucially on this issue are 19-25. If proved, the court could conceivably find the following:

Galaxy offered and sold, through a multi-level distribution network, products relating to a retail home delivery food service. While some profit could be made from investors' participation in the retail aspects of Galaxy, defendants placed the primary emphasis on the recruitment of additional investors. Investors purchased either a "Field Manager Franchise" or a "Distributorship Franchise." The Manager investment was $5,000 and gave the investor the right to receive $750 for each subsequent investor recruited by Galaxy who was introduced to Galaxy by the investor. The Distributor investment was $7,000, and gave the investor the right to receive $1,050 for introducing to Galaxy one whom Galaxy recruited as a Manager investor, and $2,400 for introducing to Galaxy one whom Galaxy recruited as a Distributor investor.

It is plain that an investor could recoup his investment in such a scheme with only a few successful

introductions, and investors were encouraged to do this. They were instructed by defendants not to inform the prospective investors in any detail about Galaxy, but just to entice them to come to the defendants' promotional meetings where they would learn how to become rich. Defendants gave investors training sessions in how to motivate friends, relatives and strangers to attend the meetings as prospective investors.

At these "Opportunity Meetings," and "Sunday Step-Up Meetings," defendants explained the Galaxy operation to the prospective investors, creating in the process a revival meeting atmosphere of success and wealth for anyone who invested in Galaxy. Investors and prospective investors were constantly encouraged by defendants to invest at the Distributorship level, as it was the most desirable form of investment because of the greater benefits then to be derived from recruitment of new investors. Defendants also controlled and ran the meetings. Non-defendant investors also attended and participated in the meetings, but their role was a minimal one, primarily lending an aura of credibility to the extravagant claims and representations made to prospective investors.

MEMORANDUM AND ORDER BY NEAHER, D. J.

The court would like to emphasize that the above description constitutes, at present, only an unproven scenario. But what is important is that it is drawn not from imagination, but rather from a fair reading of the many factual details in plaintiff's complaint. Whether, in this scenario, these Field Manager and Distributorship Franchises are not "securities" as a matter of law is a question of first impression in this court.

The reported decisions of other federal courts reveal only two cases, each relatively recent, which have dealt with the problem in somewhat similar circumstances. Securities and Exchange Commission v. Glenn W. Turner Enterprises, Inc., 348 F. Supp. 766 (D. Ore. 1972), aff'd, 474 F.2d 476 (9 Cir. 1973); Securities and Exchange Commission v. Keeper Interplanetary, Inc., 365 F. Supp. 588 (N.D. Ga. 1973). Both cases acknowledge the Supreme Court's admonition in Tcherepnin v. Knight, 389 U.S. 332, 336 (1967), to construe the federal securities laws not technically or restrictively, but flexibly, to effectuate their remedial purposes. In its memorandum of law in support of a motion for a preliminary injunction, the S.E.C. has (at pages 27-36) carefully and fully presented

to the court legislative and judicial history and contends that the court is bound to place a liberal construction on the term "security" as used in the federal securities laws. Certainly the Turner and Koscot courts analyzed the question from that same starting point, though they reached quite opposite conclusions. This court also accepts that premise.

After a hearing on the merits, the district court in Turner found the interests sold by defendants to be "securities" within the meaning of all three of the definitions advanced by the S.E.C., and granted preliminary injunctive relief in its favor. On appeal, the Ninth Circuit affirmed on the grounds that what was sold were certainly "investment contracts" within the meaning of the federal securities laws, and did not reach the question of the propriety of the district court's alternative holdings. 474 F.2d at 480. In Koscot, the district court dismissed the action for failure to state a claim, finding that the interests sold did not fall within any of the three definitions of "security" advanced by plaintiff.

MEMORANDUM AND ORDER BY NEAHER, D. J.

A close reading of both cases does not reveal conclusively whether the Koscot court simply rejects the reasoning of the Ninth Circuit in Turner or found the cases factually distinguishable in terms of the crucial issue of the substantiality of the efforts to be made by investors. Compare 365 F. Supp. at 591 with 474 F.2d at 482. In any event, this court is not prepared to reject out of hand, and on the pleadings in this case, the standard laid down by the Ninth Circuit:

> [T]he fact that the investors here were required to exert some efforts if a return were to be achieved should not automatically preclude a finding that the [interest sold] is an investment contract. To do so would not serve the purposes of the legislation. Rather we adopt a more realistic test, whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.[7]

The court, moreover, adopted that standard well aware of Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293, 298-99 (1946), a case heavily relied on by defendants here in arguing that the franchises in question are not investment contracts.

When all the facts are in, this court may well conclude that the Turner standard is the proper one to

apply to this case and requires judgment for plaintiff. On the other hand, the court may instead decide that plaintiff has failed to establish that a security is involved, either under the Turner standard, or whatever standard the court deems appropriate in light of all the facts developed upon a trial. Similarly, the entire issue may be moot if plaintiff fails to prove the requisite fraud allegations.

Nevertheless, the court is convinced that defendants have presently failed to show that plaintiff has not stated a sufficient claim, at least insofar as alleging that a "security," within the meaning of the federal securities laws, is involved. Nor does the court think it appropriate, in light of the incipiency of this type of litigation, to pigeonhole plaintiff in one of its alternative theories of definitional adequacy. We hold only that full factual inquiry is essential for adequate resolution of the issue, and that dismissal under Rule 12(b)(6) must be denied at this time.

Accordingly, defendants' several motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted

MEMORANDUM AND ORDER BY NEAHER, D. J.

are denied. Those defendants who have not yet answered the complaint will do so within ten (10) days after receipt of a copy of this memorandum and order. The action will then be calendared for plenary trial at the earliest practicable date.

So ordered.

/s/ EDWARD R. NEAHER
U. S. D. J.

Dated: Brooklyn, N.Y.
February 12, 1974

MEMORANDUM AND ORDER BY NEAHER, D. J.

FOOTNOTES

[1] Defendant Galaxy Foods, Inc., filed a voluntary petition in bankruptcy on November 28, 1973 (Docket No. 73 B 1234) which is pending before Bankruptcy Judge Joseph V. Costa. S. A. Hauptman, Esq., has been appointed trustee in bankruptcy.

[2] 474 F.2d at 482. The court's approach in that case was endorsed recently by the Third Circuit, which then held that certain franchise licensing agreements were not securities. Lino v. City Investing Co., 487 F.2d 689 (3 Cir. 1973).

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GALAXY FOODS, INC.
ARTHUR LIEBERMAN a/k/a ARTY LEE
RALPH AVNI
CHARLES HOROWITZ
BRUCE KATZ
STEVEN ROTH
MARK GLAZER
IRWIN DONALD KIRSCHENBLATT a/k/a CONALD KIRSCH
GEORGE PADILLA
ARTHUR SHEVACK,

Defendants.

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ORDER OF PRELIMINARY INJUNCTION BY CONSENT

73 Civil 1743 (ERN)

Plaintiff, Securities and Exchange Commission, having filed its complaint herein on November 26, 1973 and defendants Arthur Shevack ("Shevack") and Irwin Donald Kirschenblatt ("Kirsch"), having admitted the jurisdiction of this Court over their person, and having consented to the herein Order of Preliminary Injunction enjoining them from engaging in acts and practices which constitute and will constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, as amended, 15 U.S.C. 77e(a), 77e(c) and 77q(a) and Section

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH

10(b) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5, as relates to the sale of securities of Galaxy Foods, Inc. or any subsidiaries or affiliates thereof, and the Court being fully advised in the premises, and there being no just cause for delay of the entry of this Order of Preliminary Injunction, it is hereby

ORDERED that the defendants Shevack and Kirsch, their agents, servants, employees, and attorneys acting under their direction and each of them, be and hereby are preliminarily enjoined from:

A. Directly and indirectly

1. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of any prospectus or otherwise, the securities of Galaxy Foods, Inc. ("Galaxy"), issued or to be issued by said corporation, or by any subsidiaries or affiliates of said corporation, unless and until a registration statement has been filed with the Securities and Exchange Commission

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH

as to such securities, or while a registration statement filed with the Securities and Exchange Commission as to such securities is the subject of a refusal order or stop order of the Securities and Exchange Commission or (prior to the effective date of the registration statement), any public proceeding examination under Section 8 of the Securities Act of 1933;

2. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities of Galaxy issued or to be issued by said corporation, or by any subsidiaries or affiliates of said corporation, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; and

3. carrying the securities of Galaxy issued or to be issued by said corporation, or by any subsidiaries or affiliates of said corporation, or causing such

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH

securities to be carried through the mails or in interstate commerce by any means or instruments of transportation for the purpose of sale, or delivery after sale, unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities.

Provided, however, that nothing in the foregoing portion of this preliminary injunction shall apply to any security which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended, 15 U.S.C. 77e.

B. Directly and indirectly

1. in connection with the offer for sale, sale, offer to purchase, or purchase of the securities of Galaxy issued or to be issued by Galaxy, its subsidiaries, affiliates, assigns, or successors, making use of any means or instruments or instrumentalities of transportation or communication in interstate commerce or by the use of the mails, to employ

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any device, scheme or artifice to defraud; to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser, prospective purchaser, seller, or prospective seller; or to obtain money or property by means of untrue or misleading statements of material facts or omissions to state material fact, necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, concerning but not limited to the following:

(a) the operation, production and nature of Galaxy's business;

(b) the financial condition of Galaxy including the assets and liabilities of such issuer;

(c) the amount of securities held by insiders of Galaxy;

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH

(d) the identity and background of management of Galaxy;

(e) the number of shares issued and outstanding of Galaxy;

(f) the value of the assets of Galaxy;

or any other untrue statements or omissions of similar purport or object; and it is further

ORDERED that pending the appointment and installation of any equity receiver or a Court appointed officer as requested by the Commission, the defendants herein, their officers, directors, nominees, agents, servants, employees, attorneys, successors, assigns, depositories, banks and those persons in active concert or participation with them acting under their direction, and each of them be and they hereby are enjoined from, directly or indirectly, transferring, changing, selling, pledging, assigning, or taking any other action or causing any such action to be taken with respect to any assets of defendant Galaxy, its subsidiaries or affiliates, which would or could result in the removal of such assets from the boundaries of the United States; and it is further

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH

ORDERED that this order having been issued pursuant to consent of those defendants affected thereby, the consent to such order shall not be deemed, for any purpose, an admission by said defendant of the commission of any acts hereby restrained nor shall same be deemed an admission, for any purpose, of the commission of any acts heretofore specified in the plaintiff's complaint, nor shall this provision be deemed an exculpation from liability of the acts specified in the plaintiff's complaint, all such issues being specifically reserved for the ultimate trial of all issues in the event this action shall proceed to trial; and it is further

ORDERED that this Court shall retain personal jurisdiction of this matter for all purposes subject, however, to any procedural remedies which may be sought by any of the defendants by motion or otherwise.

Dated: New York, New York
February , 1974

United States District Judge

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH

CONSENT

Defendant ARTHUR SHEVACK who is represented by counsel, admits the jurisdiction of this Court over his person and hereby consents to the entry of the within Order of Preliminary Injunction, without admitting or denying allegations of the Complaint.

No tender, offer, promise or threat of any kind whatsoever, has been made by plaintiff Securities and Exchange Commission, or any member, officer, agent or representative thereof, in consideration for the foregoing consent.

The Court shall retain personal jurisdiction in this matter for all purposes.

ARTHUR SHEVACK

Dated: New York, New York
February , 1974

APPROVED:

ALVIN I. GOIDEL, ESQ.
Attorney for Defendant
Arthur Shevack

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS
SHEVACK AND KIRSCH

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

On this day of February, 1974 before me personally appeared ARTHUR SHEVACK to me known and known to me to be the person who executed the foregoing instrument and duly acknowledged to me that he executed the same.

_____

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS SHEVACK AND KIRSCH

CONSENT

Defendant IRWIN DONALD KIRSCHENBLATT who is represented by counsel, admits the jurisdiction of this Court over his person and hereby consents to the entry of the within Order of Preliminary Injunction, without admitting or denying allegations of the Complaint.

No tender, offer, promise or threat of any kind whatsoever, has been made by plaintiff Securities and Exchange Commission, or any member, officer, agent or representative thereof, in consideration for the foregoing consent.

The Court shall retain personal jurisdiction in this matter for all purposes.

Irwin Donald Kirschenblatt

IRWIN DONALD KIRSCHENBLATT

Dated: New York, New York
February , 1974

APPROVED:

ALVIN I. GOIDEL, ESQ.
Attorney for Defendant
Irwin Donald Kirschenblatt

ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS
SHEVACK AND KIRSCH

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

On this day of February, 1974 before me personally appeared IRWIN DONALD KIRSCHENBLATT, to me known and known to me to be the person who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

TRANSCRIPT.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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SECURITIES EXCHANGE COMMISSION, :

Plaintiff, :

-against : 73-C-1742

GALAXIE FOODS, et al., :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

September 30, 1974
12:15 o'clock p.m.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

ALLAN LERNER, ESQ.
HARRY GARMANSKY, ESQ.
REGINA MYSLIWIEC
JULIA WILLIAMS

ALVIN GOIDEL, ESQ.
Attorney for Defendants Arthur Shebach and
Irwin Kirschenblatt

BERT GUSRAE, ESQ.
Attorney for Defendants Auni, Horowitz, Glazer,
Lieberman & Katz
225 Broadway
New York, New York

GEORGE PADILLA
Pro Se

BS:jm
TlamRl

THE CLERK: Securities and Exchange Commission versus the Galaxie Food, Inc., et al.

MR. GUSRAE: Your Honor, I represent five of the named defendants in this action at this time, and it has been agreed between the five parties I represent and the plaintiff, Securities and Exchange Commission, that solely for the purpose of this proceeding, and without admitting or denying any of the allegations in the Commission's complaint, defendants Arthur Lieberman, Ralph Avni, Mark Glazer, Charles Horowitz and Bruce Katz hereby consent to a permanent injunction as sought by the SEC in its complaint.

With respect to the issue of disgorgment, it has been agreed, basically between the plaintiff and my five parties, that an amount equal to eighty-five hundred dollars will be somehow turned over to the Court, or somehow worked out with the Court in satisfaction of that portion of the complaint. The terms of the pay-out have not been worked out, but I believe that substantially we have agreed to terms on that.

MR. LERNER: Mr. Gusrae's statements are accurate, are correct, and the only thing remaining is, as indicated, the pay-out. We think we can work out a solution with respect to them.

THE COURT: We are talking here about a permanent

injunction?

MR. LERNER: That's correct, a permanent injunction with respect to violations of the registration and the anti-fraud provisions, Sections Five and Section 10B, 10 and 10B.

With regard to another defendant in this case, Mr. Roth, we have been in contact with his attorney and it appears that we will be able to work out a settlement with him as well. The only thing which has not been decided between us and Mr. Roth's attorney, Mr. Silverman, is the amount of the disgorgement.

We think we can come to terms within the next day.

THE COURT: So that takes care of six defendants. Who was the first defendant?

MR. GUSRAE: Arthur Lieberman.

THE COURT: The fourth defendant after Glazer was

MR. GUSRAE: Charles Horowitz and Bruce Katz. There is also another defendant, which is Galaxie Foods, which presumably is not a party to this proceeding at this point, so I think you have taken care of seven of the defendants.

THE COURT: I suppose Galaxie Foods has the benefit of a stay order in the bankruptcy action?

MR. LERNER: I believe it does.

THE COURT: All right. That leaves us with a few other defendants: Mr. Kirsch, Mr. Padilla and Mr. Shebach.

MR. GOIDEL: Your Honor, my name is Alvin Goidel. I appear for Messrs. Kirschenblatt, also known as Kirsch, and Arthur Shebach.

DEFENDANT PADILLA: I am defending myself.

THE COURT: You are Mr. Padilla, pro se.

MR. PADILLA: Yes.

THE COURT: Where do we stand with respect to your clients, Mr. Goidel?

MR. GOIDEL: We are ready for trial.

THE COURT: Mr. Padilla, you feel yourself ready for trial?

MR. PADILLA: Yes.

THE COURT: Mr. Lerner?

MR. LERNER: Mr. Garmansky will make our opening statement, your Honor.

THE COURT: All right, Mr. Garmansky, you may proceed.

MR. GARMANSKY: May it please the Court, on November 26th, 1973, the Commission filed its complaint initiating this action against the defendants, Galaxie Foods, Inc., Arty Lee, Ralph Avni, Charles Horowitz, Bruce Katz, Steven Roth, Mark Glazer, Donald Kirsch,

George Padilla and Arthur Shebach for violations of the registration and anti-fraud provisions of the Federal securities laws. As of the present date, all defendants have consented to the entry of preliminary injunctions.

The crucial and threshold issue in this action is whether the defendants have been offering for sale and selling securities within the meaning and definition of the Federal securities laws which includes investment contract.

As the Commissions' Memorandum of Law shows,the

(continued on next page)

overwhelming weight of authority in both Federal and State court decisions resoundingly answer this issue in the affirmative. The test for whether or not an investment contract exists was enunciated by the Supreme Court of the United States in SEC v Howey, in essence, the Howey case held an investment contract to exist where money is invested in a common enterprise with profits to be earned solely from the efforts of others.

In SEC versus Glenn W. Turner Enterprises, Inc., et al, in the Ninth Circuit, that court has held that "efforts" means those essential managerial efforts which affect the success or failure of the enterprise. The Fifth Circuit, which reversed the District Court decision in SEC v Koskot, et al, in August of this year, now follows the Ninth Circuit reasoning in holding that a security does exist.

The Commission believes, your Honor, that the facts in the case at bar are substantially similar to those facts in the Glenn W. Turner and Koskot cases from which the courts concluded that the offer and sale of a security had occurred.

The Commission will show through testimony and documentary evidence that the defendants designed,

initiated, and executed an elaborate scheme under the guise of a seemingly valid business in order to defraud hundreds of investors in Galaxie Foods, Inc. of approximately two and one-half to three million dollars.

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The Commission will show that the defendants completely dominated, controlled, and ran Opportunity Meetings and Sunday Step-Up Meetings. As part of this control and domination, your Honor, the defendants wrote the scripts to be used at these meetings. These scripts were mandatory throughout the entire existence of Galaxie. The defendants also employed subtle forms of psychological techniques with an end in mind to induce investors to join Galaxie.

The defendants enticed prospective investors to join by holding out huge financial rewards in Galaxie. The only ones in Galaxie, your Honor, to reap these huge financial rewards that the defendants talked about were the defendants themselves, because they received a percentage commission from all gross sales of franchises or investments.

The investors in Galaxie merely became pawns for the defendants to utilize for their own illicit purposes. The defedants made repeatedly empty promises of retailing, of expansion and how the Galaxie concept would sweep the country.

In fact, your Honor, if one looks closely at the Galaxie operation, it becomes quite obvious why the retailing concept was doomed ever before it began. Out

of every single dollar that came into Galaxie, approximately fifty-five to fifty-eight cents would go out payable for commissions.

The fraudulent conduct and blatant falsehoods used by the defendants is tantamount to theft. The defendants made no attempt to search out sophisticated sales-oriented investors, but instead the defendants sought out individuals who would be easy prey for their illicit scheme.

The offer for sale and sale by the defendants of these investment contracts was in effect nothing more than licenses to recruit other investors into Galaxie to earn commissions.

The Commission will show that the only role of the Galaxie investor was to recruit individuals to the Galaxie meetings at which the defendants, utilizing the most egregious type of fraud, would persuade and convince these potential investors to invest hundreds of thousands of dollars into Galaxie.

The defendants used subtle insidious psychological techniques against a background of high pressure, glamorized revival-type meetings to convince investors to part with their money.

The defendants' promotional scheme was nothing

more than a get-rich-quick scheme in the worst sense. The defendants fostered an illusion of affluence at these meetings in the hope that potential investors would be brainwashed into making a spontaneous decision to invest and not to examine Galaxie with a critical objective eye.

The defendants' promotional scheme can best be analogized to the "boiler room" type of selling of securities which took place in the sixties. Boiler room activity, your Honor, consists of essentially offering securities to individuals through an intensive campaign by using numerous salesmen with telephones without regard to the suitability to the needs of the customer in connection with high-pressure sales tactics so as to induce a hasty decision to buy the security.

As with Galaxie, the defendants used this type of approach in selling their investment contracts. The defendants' lack of honesty and integrity will be clearly shown by testimony and documentary evidence relating to the facts that the defendants encouraged potential investors to take out bank loans to join Galaxie and to persuade them to make false statements on the loan applications.

Hundreds of investors in Galaxie have been left

in financial ruin by the defendants' illegal conduct. These investors trusted the defendants to utilize their hard-earned money in making Galaxie a successful enterprise. Instead, the defendants, if not by premeditated design, then certainly by their deliberate fraudulent misrepresentations and omissions of material facts, caused a total loss of all funds entrusted to their management.

The defendants used Galaxie for their own pecuniary profit and then dumped its empty shell into bankruptcy. The conduct and activities engaged in by the defendants clearly shows that these defendants should be enjoined permanently from future violations of Federal securities laws and, in addition, that the defendants disgorge all pecuniary benefits derived from their fraudulent and illegal conduct.

Thank you, your Honor.

THE COURT: Anyone on your side, Mr. Goidel?

MR. GOIDEL: If I may, your Honor.

May it please the Court, your Honor, my office represents the defendants Shebach and Kirschenblatt. Mr. Garmansky's opening statement began with his referring this Court to the statute which says that one shall not offer and sell a security which is unregistered

nor shall he engage in any fraudulent activity in the sale of same.

I think it should be noted, and I believe this Court should be aware of the fact when it listens to the evidence, that the very act which Mr. Garmansky refers to was enacted theoretically for the protection of my two clients, Messrs. Shebach and Kirschenblatt, both of whom were franchisees, neither of whom was a shareholder of the corporation; neither of whom was a promoter or an organizer or a subscriber to the stock of the corporation; one of whom, to wit: Mr. Kirschenblatt, was an employee of the corporation, and I believe it will be demonstrated during the course of this trial that his job was predominantly to market food, not to sell franchises.

The words, "designed, initiated," and I believe the word, "implemented", were used. My clients did not design, organize or structure Galaxie Foods. They did not initiate its operation and they did not implement the corporate activities in the sale of franchises,but having purchased franchises themselves, in one instance by the payment of a substantial sum of money, and in another instance by the performance of a great deal of work in organizing the marketing end of the business,

they themselves became franchisees and, in one instance thereupon sold franchises.

We now get into the word, "sold" because that has been a word that has been bandied about quite a bit.

Messrs. Shebach and Kirschenblatt. at best, accepted applications, they did not sell. They could not sell. They were not the corporation. They were not shareholders of the corporation. They could not execute a contract in behalf of the corporation. Consequently, the more we speak of it, the more it becomes apparent that they were, if duping did take place, themselves duped.

Now, we have read many cases, some of which have been cited by our adversaries, and none of them, to our belief, demonstrates an action commenced wherein the franchisee, the person to be protected, was ever made a defendant.

Now, there were seven hundred and fifty franchisees in this corporation. There were approximately, if our information is correct -- and I believe it will be demonstrated during the course of the trial-- one hundred and fifty franchisees who, having purchased a franchise, in turn solicited applications from others, and yet to our knowledge there are only three

franchisees out of the seven hundred and fifty who were ever made parties defendant to this litigation, and they are, if I am correct, Mr. Padilla, whom we do not represent, Mr. Shebach and Mr. Kirschenblatt.

Now, it is our belief, without going into it, that they were made parties defendant for reasons other than what the facts of this case will reveal. If the Securities and Exchange Commission wishes disgorgement from people, and if we ask ourselves for whose benefit this disgorgement is to be obtained, then obviously it is for the benefit of my clients, Messrs. Shebach and Kirschenblatt, who for consideration obtained franchises.

Your Honor, I do not wish to go further into the merits of the case at this point, but I ask your Honor to do one thing: there are multiple defendants in this action, and in Mr. Garmansky's opening he constantly referred to the defendants in the conjunctive.

Your Honor, I would simply request that when testimony is given that it be clear as to which of the defendants the testimony relates, because I would not wish that anything stated about the defendant corporation or its shareholders be imputed to the defendants Shebach or the defendant Kirschenblatt or, for that matter, even to the unrepresented defendant, Mr. Padilla.

Thank you, your Honor.

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THE COURT: Mr. Padilla, do you desire to address the Court?

MR. PADILLA: Yes, I do, your Honor.

Before I begin, I'd like to say, as you know, I am appearing pro se, I am not an attorney so if I use terms that are not formally used in court, I beg your forgiveness.

Let me just -- I entered Galaxy Foods in -- I have been named here as a defendant charged with selling illegal securities, fraud and what have you. When I entered -- I entered Galaxy Foods a year after Galaxy Foods had already commenced. I was No. 142 of the franchisees. I entered as a field manager.

I purchased a franchise and began to work at what I was taught to do in a training school. I feel personally that if anything that I am guilty of is of learning too well the job that I was taught at the training school and going out and doing exactly what I was trained at the management school given by the executives at that time of Galaxy Foods, and possibly the only thing that, if anything, that I am guilty of, is of being a good salesman. I have no doubt of that.

Before Galaxy Foods I had never sold anything in my life. I was, as is known, as New York City policeman. I went into Galaxy Foods on a part-time basis. It was

not until after several months in Galaxy Foods that I resigned from the Police Department and went on to full-time basis and only because I believed in the concept of Galaxy Foods.

As a matter of fact, to this date I still believe in the concept of Galaxy Foods. I don't believe that it was ever the intention of any fraud. I believe that it could have worked had it been handled a little differently.

The fact of whether it didn't work out, it happened. Most of the people who I sponsored into Galaxy Foods were either my best of friends or my relatives. To include in those my mother, sister, uncles, brothers and what have you.

Now, I guess one of the reasons why I am in here is because they say I was successful in selling the franchising, sponsoring other people's coming into the business, and that I was, again. I believed in the concept, believing in it I sold it with enthusiasm and I guess my own enthusiasm projected into those who I spoke to and again those being mostly my friends, whom since then I have no longer, but that's another point. Family, well, they still stick with me, but they were most of my immediate relatives who purchased franchises

in Galaxy Foods and they were all sold by me.

As far as the records go, I obtained commissions for bringing in these individuals who invested the money. It is not known whether this money was in many cases like it was for my own relatives laid out for me, their own commissions that I was receiving I was reimbursing it back to my family, to those who I brought in, so really the profit earned by me was in no way what I am sure the numbers, the figures that were during the course of the trial will come out.

That's you know, this is basically where I'm at I came into Galaxy Foods, I believed in Galaxy Foods, I sold Galaxy Foods, I believed in its concept; to this date I still believe that it can work if it is handled in a different manner, and this is why I'm -- really why I'm here, why I'm being even named as a defendant in this case, not being one of the originals in Galaxy Foods, never being a corporate officer or any type of an officer in Galaxy Foods, and, never did I earn a penny in Galaxy Foods from other than commissions earned by sponsoring another person into the business. I never received a cent from any other type of a commission. So that's really all I have to say.

THE COURT: All right.

MR. GARMANSKY: Would the Court like to break for lunch or shall we call our first witness?

THE COURT: It seems like a very sensible suggestion at this hour. Suppose we try to resume here at 2:00 p.m.

I take it you will have witnesses?

MR. GARMANSKY: Yes.

(Luncheon recess taken.)

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AFTERNOON SESSION

THE COURT: All right. Ready to go?

MR. GARMANSKY: Yes, your Honor. The Commission would like to call as its first witness Mr. Irwin W. Kirschenblatt.

MR. GOIDEL: Mr. Kirschenblatt is not in court right now.

THE COURT: Was he here this morning?

MR. GOIDEL: He was. I was advised by Mr. Garmansky that his first witness was going to be Mr. Arthur Lee, and as a consequence I asked both Messrs. Kirschenblatt and Shebach to do something for me during the recess. Had I been advised that they would be the first witness, he would have been here.

MR. GARMANSKY: Mr. Goidel, do you know what time Mr. Kirschenblatt will be back?

MR. GOIDEL: As soon as he finishes what I asked him to do. He is not going to be gone all day, that's all I can tell your Honor.

THE COURT: Who is the witness you had been told would be on?

MR. GOIDEL: I was told that Mr. Leiberman would be called as the first witness for the Securities and Exchange Commission.

THE COURT: Is he present?

MR. GARMANSKY: Your Honor, he is present. However, perhaps the SEC would wish -- I don't know whether or not I told Mr. Goidel Mr. Lieberman would be the first witness or that my witnesses for today would be Mr. Lieberman and Mr. Kirsch. I do not recall that, though Mr. Goidel may be correct. But I just don't recall it.

I do recall telling him there would be two witnesses for the first day, Mr. Kirsch and Mr. Lieberman.

THE COURT: It is impossible for me to arbitrate the matter. I am simply trying to find out whether the other of the two is here, Mr. Garmansky. Is Mr. Lieberman available?

MR. GARMANSKY: He is in court.

THE COURT: You did propose to call him?

MR. GARMANSKY: We do, your Honor.

THE COURT: Then I suggest you simply reverse the order and call him.

MR. GARMANSKY: If he could ask Mr. Goidel what time he expects Mr. Kirschenblatt to return, within five or ten minutes?

MR. GOIDEL: I am not going to act clairvoyant in this matter.

I understand, and there was no question about it, you said to me that Mr. Lieberman would be your first

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witness, would Mr. Kirsch be here this afternoon to assume the stand, and I even said to you in the hallway that if Mr. Lieberman is your first witness, I would contemplate taking the remainder of the day to cross-examine him.

I cannot sit here and tell you what Mr. Shebach and Mr. Kirsch are doing for me, but I have asked them to do something and to get back to the courthouse as rapidly as possible, and I know that what I have asked them to do will not take hours.

Whether they will be back in twenty minutes or an hour and twenty minutes I cannot answer.

THE COURT: Can you proceed with Mr. Lieberman at this time?

MR. GARMANSKY: Yes, your Honor.

THE COURT: All right.

MR. GARMANSKY: The Commission would call Mr. Arthur Lieberman.

(continued on next page)

A R T H U R L I E B E R M A N , called as a witness, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

MR. GARMANSKY: Your Honor, before I begin the questioning of Mr. Lieberman, I would like to offer into evidence as Plaintiff's Exhibit 1 an official document from the United States Securities and Exchange Commission, which attests to the fact that no registration statement has been ever filed with the Commission, pursuant to the registration statement under the Securities Act of 1933.

THE COURT: Are counsel familiar with it?

MR. GOIDEL: As long as it is understood, your Honor, that that refers to Galaxie Foods, Inc., I have no objection.

MR. GARMANSKY: It refers to Galaxie Foods, Inc.

THE COURT: Any objection, Mr. Gusrae or Mr. Padilla?

(No response.)

THE CLERK: So marked Plaintiff's Exhibit number 1 in evidence.

(So marked.)

MR. GOIDEL: I have no objection.

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DIRECT EXAMINATION

BY MR. GARMANSKY:

Q Would you state your name, please?

A Arthur J. Lieberman.

Q Mr. Lieberman, are you known by any other names?

A Artie Lee.

Q What is your address, Mr. Lieberman?

A 1554 Ocean Avenue, Brooklyn, New York.

Q Are you employed?

A Yes, I am.

Q Would you tell the Court your place of employment?

A I am working at Oscar's Restaurant in Brooklyn, New York.

Q What do you do there, Mr. Lieberman?

A I am an entertainer.

Q Have you ever heard of a company called Galaxie Foods, Inc., hereinafter referred to as Galaxie?

A Yes, I did.

Q Please tell the Court under what circumstances you heard about Galaxie?

A I don't understand -- the circumstances I first heard about it?

Q Yes.

A I was approached in the summer of 1971, I believe

it was June or July, by Kenneth T. Rosenthal, who had the idea of formulating a company that eventually became Galaxie Foods.

Q Who was Mr. Rosenthal?

A He was an associate of mine in a boutique that we were working in.

MR. GARMANSKY: Your Honor, may I have one moment, please?

THE COURT: Yes.

(Pause.)

MR. GARMANSKY: Your Honor, Mr. Kirschenblatt has entered the courtroom. In view of the fact that we have only proceeded for several questions with Mr. Lieberman, we now wish to call Mr. Kirschenblatt to the stand.

MR. GOIDEL: Your Honor, there is absolutely no valid explanation given for interrupting the testimony of a witness, number one. Number two, having been advised myself that I should be prepared for cross-examination of Mr. Lieberman this afternoon, I stand prepared to cross-examine Mr. Lieberman.

The plan that I have as relates to what has been proposed to me, I am very, very suspect at this point as to the reason for the change of order, that is, that this request has been made. I suggest that we proceed

with the witness on the stand.

MR. GARMANSKY: Mr. Goidel knew that both witnesses would be called. I expect that he is fully aware of it. He said that before.

Mr. Goidel has no privilege as to the order of the presentation. In view of the fact that we have only gone through four questions, there is no harm in now changing the witness from Mr. Kirschenblatt -- to Mr. Kirschenblatt.

THE COURT: I have to agree, Mr. Goidel, that Mr. Garmansky certainly called Mr. Kirschenblatt as his first witness when court opened, and Mr. Kirschenblatt was not placed on the stand at that time because of your explanation that he would not be available.

However, since he has just made himself available, and this witness' examination has really just about opened, I can't see any particular reason why the plaintiff should not have the right to proceed with its case as he sees fit.

I can't see any prejudice to you in the circumstances so I will grant your application, Mr. Garmansky.

You may step down, Mr. Lieberman.

You may call Mr. Kirsch.

You understand, Mr. Lieberman, that you will undoubtedly be called as the next witness and I expect you will be present here in court.

THE WITNESS: Yes, your Honor.

(Witness excused.)

MR. LERNER: Your Honor, the Plaintiff now calls Donald Kirschenblatt to the stand.

I R W I N D O N A L D K I R S C H E N B L A T T , called as a witness, having first been duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. LERNER:

Q Mr. Kirschenblatt, have you ever been known by any other name?

A Donald Kirsch.

Q Is that a legal name?

A No.

Q Do you presently use the name Donald Kirsch?

A It is an abbreviation for Kirschenblatt.

Q Do you presently use the name?

A Yes, I do.

Q Did there come a time in 1971 when you became employed by Galaxie Foods?

A Yes.

Q During the time you were employed by Galaxie Foods

did you use the name Kirsch?

A Yes.

Q Are you presently employed, Mr. Kirsch?

A Yes.

Q Where are you employed?

A Futuristic Foods, Inc.

Q When did you first become associated with Galaxie Foods?

A Around August of '7[illegible].

Q When did you leave the company.

A January, '73.

Q Can you be more specific as to the date?

A I formally resigned on January 2. I left, I think, it was January 15.

Q Under what circumstances did you leave the company?

A I gave my two week resignation and I resigned as an employee.

Q Why did you leave?

A Disagreement with management above. I wasn't satisfied with the way they were running the operation and because I felt I was not fulfilling my position.

Q Any other particular purpose, any other particular reason why you left the company?

A Because I felt that they were not interested in retailing.

Q Were you asked to leave the company, Mr. Kirschenblatt?

A No.

Q When did you first become associated with Futuristic Foods?

MR. GOIDEL: Objection, your Honor.

MR. LERNER: Subject to connection.

THE COURT: Did you say Futuristic? I thought he said Beatrice.

THE WITNESS: Futuristic.

MR. LERNER: Futuristic is the company with which Mr. Kirschenblatt's presently involved, and I think -- I won't dwell on the area long, but I think the relevancy will be shown after the following question or questions.

MR. GOIDEL: Your Honor, Futuristic Foods is a corporation organized under the laws of the State of New York, that was organized in approximately January of 1973.

I don't know that it has any materiality or relevancy to anything in this case. Your Honor may recall that I originally stated in my opening remarks

that there were reasons in our opinion why Mr. Kirsch was made a defendant to this proceeding other than his activities with regard to the named defendants. I don't believe that is in issue here.

If they wish to join another party defendant they may do so.

MR. LERNER: Your Honor, I will show relevancy. I will be prepared to make an offer of proof to show that Mr. Kirsch was a promoter or instigator in some fashion at Futuristic Foods at a time when he was also employed by Galaxie Foods, and it also led to his being requested to leave Galaxie Foods.

Furthermore, your Honor, we will also show later during the course of Mr. Kirsch's testimony that the structure of Futuristic Foods is basically similar to that of Galaxie Foods and therefore it would be relevant on the question of whether an injunction should issue against Mr. Kirsch.

MR. GOIDEL: Your Honor, if I may be heard. We had this matter come up sometime before, I believe, on the original motions to dismiss. At that time I believe it was your Honor's permission that since Futuristic Foods was not a party to this proceeding that anything having to do with Futuristic Foods should abate at the

time of the trial which is now pending, not then pending, but in the United States District Court for the Southern District.

We are concerned with what Mr. Kirsch did in connection with the activities of Galaxie Foods, Inc., and we are prepared to meet any charges and all charges in relation to that.

Anything extraneous to that has no place before this court at this time.

MR. LERNER: I am not offering testimony, or not seeking to elicit testimony from Mr. Kirsch concerning Futuristic for its substantive value, I am seeking to elicit it for the purposes of impeachment. It goes to--

MR. GOIDEL: He is your witness.

MR. LERNER: He is a defendant in a case.

MR. GOIDEL: That does not make him hostile, according to the laws, unless you first demonstrate that he is uncooperative.

MR. LERNER: We would be prepared to cite the new Federal rules with respect to adverse or hostile witnesses, that the Federal rules do not recognize adverse or hostile witnesses, that any one can be treated as such if he is a defendant in a case.

We can ask those type of questions pertaining to

those witnesses.

MR. GOIDEL: I know of nothing in the Federal rules that states you can impeach your own witness unless he demonstrates uncooperativeness.

MR. LERNER: I will cite you to the Section.

MR. GOIDEL: I would be very happy to read it.

MR. LERNER: Your Honor, at the present time, I withdraw the question and hold it for a future time during the examination while my associate looks for the appropriate Section.

THE COURT: All right.

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DIRECT EXAMINATION

BY MR. LERNER: (Cont.)

Q Mr. Kirsch, under what circumstances did you join Galaxie Foods?

How did you happen to come into the company?

A I was approached by Ken Rosenthal and Ralph Avni and asked if I wanted to become part of a corporation. I was then later told that I would become in charge of the marketing end of the business, such as buying. That's how I joined.

Q Did you ultimately become part of the marketing end of the business?

A I became -- yeah, I was given a title, but I was really a buyer. I became part of the --

Q Just answer the question.

Did you become part of the marketing end of the business?

A Yes.

Q Were you given a title at that time?

A Yes.

Q What was that title?

A Vice president of marketing.

Q Did you also become a director of the company?

A No.

Q Your answer, sir?

Q Mr. Kirsch, do you recall testifying before the Securities and Exchange Commission about September 14, 1973?

A Yes.

Q Do you recall being sworn under oath at that time?

A Yes.

Q I have before me, Mr. Kirsch, a copy of that transcript which I'd like to read you a portion of.

Mr. Garmansky was taking a transcript at that time, is that correct?

A Yes.

Q His question to you is: "Now, Mr. Kirsch, I would like to afford you this opportunity to ask any questions or to add any statement you wish for the record or to clarify any of the matters you discussed today?

"The Witness: Yes, I would like to clarify a few points.

"Mr. Garmansky: Okay.

"The Witness: One point was a question, I guess, maybe misinterpreted by myself when you asked was I an official of the company.

"MR. Garmansky: Not an official, an officer.

"The Witness: Oh, then, I don't have to clarify that question. I was not an officer. I was on the Board of Directors, but I guess that makes me an official.

"Mr. Garmansky: I asked you that.

"The Witness: You asked if I was an official.

"Mr. Garmansky: No, I asked you if you owned stock.

"The Witness: Right, I didn't.

"Mr. Garmansky: Or,you were a director.

"The Witness: I am almost sure you asked that, that is why I'm rephrasing that question. I was on the Board of Directors.

"Mr. Garmansky: From what period of time?

"The Witness: From the beginning.

"Mr. Garmansky: From September '71 to January '73?

"The Witness: Yes."

Does that refresh your recollection as to whether or not you were a director of the company?

A Well, when I said I was a director, it was because I was not an officer of the corporation, I was not a shareholder and the Board of Directors was not formed until later on.

When I first became part of Galazie Foods, I was not what they call a director at the beginning. When they formed the Board of Directors, then I became a director of the Board of Directors. I was not an officer of a shareholder.

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Q But you were a director of the company; is that correct?

A Yes.

MR. GOIDEL: Your Honor, the original question asked was whether at the time that he joined Galaxie Foods he was a director.

Now, if you want to fix a different time then I would suggest that the question be phrased differently.

MR. LERNER: I don't believe that was my question, your Honor. My question was: Were you a director of Galaxie Foods?

MR. GOIDEL: I will object to the form.

At any time.

BY MR. LERNER:

Q At any time?

MR. GOIDEL: Thank you.

A Yes.

Q From what period of time?

A I don't know exactly when it began.

Q Let me reread you your testimony, Mr. Kirsch, on page 79 you say from the beginning, from September '71 to January '73. Was there any other time you were associated with Galaxie when you could have been or could not have been

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a director?

A No.

Q So you were a director throughout your association there; is that correct, or is this testimony incorrect?

A I don't remember making the statement from the beginning of Galaxie Foods.

Q Let me show you your transcript, Mr. Kirsch.

Would you read what it says, please?

A It says, "From the beginning."

Q You've also testified that you had a title; is that correct?

A That's correct.

Q What was your title?

A Vice president of marketing.

Q Did you ever come to own an interest in Galaxie, Mr. Kirsch?

A No, other than a distributorship.

Q A distributorship.

You heard Mr. Goidel's opening remarks; is that correct?

A Yes.

Q And you heard when Mr. Goidel stated that only three of the defendnats here today owned franchises in Galaxie; is that correct?

A Right.

Q Is that an accurate statement, Mr. Kirsch?

A From the people here today, yes, I believe so.

Q From the defendants in the case, Mr. Kirsch?

A Then I have to say that other than Arthur Lieberman and Ralph Avni, everybody else owned distributorships also.

Q So his statement was not accurate, was it?

MR. GOIDEL: My statement stands on the record, and it's very, very clear as to the precise language that I used.

He's not here testifying as to whether I erred or didn't err in my opening statement. He's here to testify.

THE COURT: I suppose that is true, Mr. Lerner. I think it's a little peripheral of the issue here.

BY MR. LERNER:

Q Did Mr. Lieberman own a distributorship in Galaxie Foods?

A Not that I know of.

Q What did you pay for your interest in Galaxi Foods, Mr. Kirsch?

A I was awarded a distributorship based on performance. I was told that if I performed and worked in my designated function I would be given a franchise, which is what they did.

Q When did you receive your franchise?

A I would say two months after, I'd say around October, September of October.

Q Of 19 --

A '71.

Q Now, when the Galaxie Foods organization--as it was set up when you joined, how could one make money if he came into the organization?

A At that time --

MR. GOIDEL: Your Honor, may I object. We have two specific things, and I'd like it made clear when we speak -- we are speaking about those who are employees of the corporation, or are we talking about persons who may buy a franchise?

MR. LERNER: I will rephrase the question, your Honor.

THE COURT: All right.

BY MR. LERNER:

Q Were representations made to potential investors as to how they could earn profits or earn monies in Galaxie?

MR. GOIDEL: Objection to the form of the question. Mr. Kirsch will testify as to his own personal knowledge.

THE COURT: I will sustain the objection as to the

form of the question. Why not ask this witness were any statements made to him about the subject.

Then the next question is who made them.

MR. LERNER: Thank you, your Honor.

(continued next page.)

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DIRECT EXAMINATION

BY MR. LERNER (Cont'd):

Q were any statements made to you, Mr. Kirsch, as to how one could earn money by coming into Galaxie?

A Yes.

Q How was it explained to you that they could earn money?

A It was explained to me that the people who bought a franchise, a distributorship, could earn money by going out and acquiring customers and therefore having food delivered to them.

At the same time, before we got to that point, they would be selling these businesses, but the whole idea was to acquire the business and get the customers.

Q When you say they were selling these businesses, what are you referring to?

A Distributorships, franchises.

Q When you joined the company, Mr. Kirsch -- by the way, is it fair to state that the selling of the food end of the business was known as the retail end and the sale of the distributorships was known as the wholesale end?

A Yes.

Q Is that an accurate statement?

A Yes.

Q Is it fair to say that retailing, when you joined the company that retailing and wholesaling could occur simultaneously?

A Excuse me. Would you repeat that, please?

Q Could you make money from the retail end and the wholesale end at the same time, when you first joined the company?

A No.

Q When could you begin making money from the retail end?

A As soon as the retailing was established.

Q When did that take place?

A That didn't take place until December of '72.

Q So you are talking about more than one year after you joined the company that retailing first took place; is that correct?

A Yes.

Q When retailing first took place, could one earn commissions?

A No.

Q Why not?

A At the time that we went into retail, it was decided that we could not afford to pay commissions until, I believe, it was 8,000 customers had been acquired.

That's what the company needed, as was discussed. That's what the company needed to break even.

Q Were prospective investors told this when they joined Galaxie between September, 1971, and let's say, August or October of 1972?

A I really don't know.

Q Do you recall overhearing anybody telling any of the prospective investors that they could earn commissions -- that they could not earn commissions until 8,000 accounts or 8,000 customers had been acquired by the corporation?

A Did I overhear it?

Q Yes, did you hear any statement to that effect being made by the management?

A No.

Q More specifically, were any statements like that made by the directors of the company, to the best of your knowledge?

A Well, I was not at these functions --

Q Just answer the question to the best of your knowledge.

Did you hear any directors of the company make that statement?

A No.

Q Did you hear any officers of the company make

that statement?

A To the best of my knowledge, no.

Q Could you please describe what happened -- strike that.

When a person came into the company, Mr. Kirsch, he came in -- is it true that he came in either as a distributor or as a field manager?

A Yes.

Q And how much would he pay for his distributorship?

A I believe at that time it was $5,000.

Q And how much would he pay for coming in as a field manager?

A I believe at that time it was $2,000.

Q What portion of the $5,000, that is the distributorship franchise, would go to the company?

A I honestly don't remember.

Q Do you know what portion of the field manager franchise, the money that was used to pay for that, would go to the company?

A I honestly don't remember.

Q Do you recall if any of it would go to the company?

A I remember a percentage was paid out, but how

much, I don't remember.

Q A percentage [illegible] to whom?

A To the person [illegible] that new investor, sponsored the new investor.

Q In the form of a commission.

A Yes.

Q What would happen to the remainder?

A It was put into the company.

Q What was it used for?

A At that time it was my understanding it was used for the furthering of [illegible] retail operation, used for growth of the company, acquiring [illegible] trucks, whatever.

Q Is it a fair statement, sir, to say, without that money the retail operation could never get off the ground?

MR. GOLDB[illegible] objection. Calls for an opinion, your Honor.

MR. BRILL[illegible] we are in a position to make that opinion.

MR. GOLDB[illegible] You haven't established he was anything but a vice-president [illegible] marketing.

MR. BRILL: [illegible] for the company, your Honor.

MR. GOLDB[illegible] that's questionable as to what

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the word "director" means. You are not testifying yet.

THE COURT: Are we going to give it the ordinary meaning?

MR. GOIDEL: I don't know that we should, your Honor. I think it will be established during the couse of this trial that he was in fact not a director, as that term is used.

THE COURT: He seemed knowledgeable enough to refer to board of directors.

MR. GOIDEL: I am aware of that, your Honor.

I think you will ascertain that board of directors in this company was not a board of directors, it was a group of officers.

THE COURT: Isn't that a matter of cross-examination?

MR. GOIDEL: Naturally. But I am objecting to the last question which called for an opinion.

THE COURT: Let me hear the last question.

(Question read.)

THE COURT: I will sustain that question as to form. Ask him directly does he know.

BY MR. LERNER:

Q You've testified, Mr. Kirsch, that the money

was used to assist in a retail program; is that accurate?

A Yes.

Q Do you know, Mr. Kirsch, that if that money hadn't gone to the retail end of the business that there would not have been a retail end of the business?

A Could you rephrase the question?

Q Could the retail end of the business have begun without that money derived from the franchising?

A No.

Q Were you salaried, by the way, Mr. Kirsch?

A Yes.

Q Did you receive a weekly or bi-weekly salary? How did you receive your salary?

A Bi-weekly, every two weeks.

Q How much did you receive every two weeks?

A I was told at the beginning tht I would be making about twenty, twenty-five thousand, but as it turned out, I was paid like a commission on the sales.

Q You were paid a commission?

A Of the sales, the total sales.

Q So it is the commission that you are saying was a salary; is that right?

A Basically, yes.

Q I see. But your salary would vary; is that

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correct?

A Yes.

Q What would your salary depend upon?

A The amount of money taken in.

Q It would depend upon the number of distributorships that were sold?

A Yes.

Q Would it depend upon anything else?

A No.

Q Did you make any money through the sale -- through your own personal sponsorship of individuals into the company?

A Yes.

Q Who did you sponsor into the company?

A I sponsored Robert Cody, a Howard Beck, and I believe it was Morris Reichtre.

THE COURT: Reichtre?

THE WITNESS: I believe it's R-e-i-c-h-t-r-e, or something like that.

Q Do you recall sponsoring anybody with the name Len, L-e-n, Lennie into the company?

A No.

(Continued on next page.)

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Q Once again, Mr. Kirsch, let me refer you to the transcript.

MR. LERNER: I might have this marked as an exhibit so I may refer to it as an exhibit.

It is an official transcript before the Securities and Exchange Commission in the matter of Galaxie Foods dated September 14, 1973, consisting of eighty-one pages and I would like it marked as Plaintiff's Exhibit number 1 --

THE CLERK: Exhibit 2.

MR. GOIDEL: Is that being offered in evidence?

THE COURT: No, just for identification so it can be referred to.

Is it one date?

MR. LERNER: Yes, September 14.

THE COURT: What year?

MR. LERNER: 1973.

THE CLERK: So marked for identification as Plaintiff's Exhibit number 2.

(So marked.)

BY MR. LERNER:

Q Now, Mr. Kirsch, let me refer you to Page 18 of Exhibit 2 and the question is asked by Mr. Garmansky:

"Question: Now, Mr. Kirsch, other than the two

people you mentioned, Mr. Cody and Mr. Beck, did you bring any other people into Galaxie?

"Answer: One more.

"Question: Who?

"Answer: I can't think of his name offhand.

"Question: Do you have a first name?

"Answer: The name was Len. I can't remember the last name. I'm sorry."

Does that refresh your recollection?

A No.

I went back to my records and I found out it was Morris, Morris Richter, or something like that.

Q Could that have been the third person, instead of Len, you were referring to?

A Yes.

Q Did you receive a commission for sponsoring any of these people in the company?

A Morris.

Q Did he come in as a field manager or distributor?

A Field manager.

Q How much of a commission did you receive?

A Like I say, I don't know if it was seven-fifty, eight-fifty, eight hundred dollars -- something like that.

Q Your transcript reflects seven hundred dollars.

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Does that help reflect your recollection?

A Then that's what it was, yes.

Q Now, did Galaxie run meetings for purposes of recruiting individuals into the company?

A Yes.

Q What were those meetings called?

A Opportunity meetings.

Q Were there any other kind of meetings?

A Well, they used to have, I think, Sunday, what they used to call a Step-Up.

Q Sunday Step-Up meetings?

A Yes.

Q Let's just focus your attention for the time being, on the Opportunity meetings.

How often were they held?

A Basically, every day, I think.

Q One question slipped my mind and I'd like to ask it now.

Did Galaxie have an executive board?

A An executive board?

Q Yes.

A Would you clarify what that means, please?

Q A group of individuals who acted on the executive policy of the company.

A Well, that executive board was the official policy and then that was handed down to the board of directors.

We listened to them and acted on what they told us to do.

Q Were you on that executive board?

A No.

Q Getting back to the opportunity meetings, how often were they held?

A Either four or five times a week.

Q Where were they usually held when you first joined the company?

A Various hotels.

Q In New York City?

A Yes.

Q Who spoke at these meetings, if anyone did?

A Who spoke at them?

Q Yes.

A Arthur Lieberman, Artie Lee, Charles Horowitz, Steven Roth and Bruce Katz.

Q Did you ever speak at them?

A Just the first one.

Q You spoke at an opportunity meeting?

A Yes.

Q Did anyone else speak at these opportunity

meetings, besides Mr. Lieberman, Mr. Horowitz, Mr. Roth and Mr. Katz? That is, anyone besides the management of the company?

A Not that I know of. Not that I'm aware of.

Q How many meetings did you attend during your tenure at Galaxie Foods?

A Not that many.

Q Would you say you attended more than fifty?

A No. I'd say not that many. It would be about fifty. I can't put an exact figure on it.

Q Would it refresh your recollection that your prior testimony, Plaintiff's Exhibit 2, states that you attended between fifty and seventy-five meetings?

A I believe at that time I also told Mr. Garmansky I couldn't put a figure on it and he said, "Would it be around fifty" and I said, "Yes" and he said, "Would it probably be around seventy-five" and I said, "Yes, seventy-five, probably."

Q Page 23, Exhibit 2, the question is asked by Mr. Garmansky:

"Question: Somewhere between fifty and seventy-five is your best recollection?

"Answer: Yes, I would say so."

Does that help refresh your recollection?

A Again, I would say, I would say so.

Q Between fifty and seventy-five?

A I can't put an exact figure on it.

Q Those meetings which you attended, between fifty and seventy-five meetings, did you see anyone speak besides the members of the Galaxie management?

MR. GOIDEL: Objection.

Are you referring to the ones you already named or are you assuming other people besides?

MR. LERNER: I am assuming other people besides.

BY MR. LERNER:

Q Taking Galaxie management as an inclusive term, did you see anyone outside the management speak?

A Not that I remember.

Q The management who spoke at this meeting, did they speak from a prepared text?

A Yes.

Q They did -- and was the text incorporated in a document known as Galaxie Foods, Inc.'s Distributors Business Manual?

A It wasn't when I was there, but maybe it is, later on.

Q But not when you were there?

A At the beginning, no.

Q Did you ever see this document before, Galaxie

Foods, Inc.'s Distributors Business Manual, which says Volume One, Number Three?

A Yes.

Q Was it in effect when you were at Galaxie Foods?

A Yes, it was, but I think you asked was it in a text like that when I was at the opportunity meetings and it was not.

Q The text was not in this manual?

A There was no manual like that.

Q Maybe I don't understand the answer.

You just stated that while you were at Galaxie Foods this manual was in existence.

A Yes, but I'm stating the prepared text that you refer to at the opportunity meetings was not in that form.

Q Was it in some other form?

A It was just typewritten -- that's it.

THE COURT: Do you plan to utilize any of those in evidence?

MR. LERNER: Yes.

THE COURT: Why don't you have them marked, at least for identification, as you refer to them. It will be much easier to track them down in any transcript so we'll know what we are talking about.

You don't have to do them in bulk, but since you

have already referred to the blue one, have that marked and then as you refer to the others, we will mark them in turn.

MR. LERNER: I'd like to mark this as Plaintiff's Exhibit --

THE COURT: Mark the blue one first.

MR. LERNER: The blue one would not be in proper chronological order.

THE COURT: But in the transcript it is the first one.

MR. LERNER: I see.

Plaintiff's Exhibit 3, a booklet entitled Galaxie Foods, Inc. Distributors Business Manual, Volume One, Number Three, consisting of ten printed pages and it has a blue cover.

THE CLERK: So marked for identification as Plaintiff's Exhibit number 3.

(So marked.)

MR. LERNER: Next, I'd like to mark as Plaintiff's Exhibit number 4, a booklet entitled Galaxie Foods, Inc. Distributors Business Manual, Volume One, Issue Two, and this has a beige cover.

THE CLERK: So marked as Plaintiff's Exhibit number 4 for identification.

(So marked.)

MR. LERNER: Next, I'd like to mark as Plaintiff's Exhibit number 5, a booklet entitled Galaxie Foods, Inc. Distributors Business Manual, with a yellow cover, no volume number on that one.

THE CLERK: So marked as Plaintiff's Exhibit number 5 for identification.

(So marked.)

MR. LERNER: Finally, I'd like to mark what appears to be a Xerox copy consisting of nine pages entitled Galaxie Foods, Inc. stapled together as Plaintiff's Exhibit number 6.

THE CLERK: So marked as Plaintiff's Exhibit number 6 for identification.

(So marked.)

(continued on next page)

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BY MR. LERNER:

Q Do you ever recall any distributors speaking at the Opportunity meetings?

A Not that I remember.

Q So, the ones who spoke at the Opportunity meetings were the management of the company, correct, as far as you can recall?

A As far as I can recall, yes.

THE COURT: Well now, when we speak of the "management" do we mean Lieberman, Lee, Katz or somebody else in addition?

THE WITNESS: To my understanding we are talking about all the management which is --

THE COURT: Who would be all the management in addition to those three you originally named?

THE WITNESS: There were many Vice-Presidents.

THE COURT: Well, just restricting them to those who were speakers -- you mentioned three initially -- Lieberman, Lee and Katz -- were there any other speakers who you would include in the term "management"?

THE WITNESS: Steve Roth.

THE COURT: Roth?

THE WITNESS: Yes.

Other management people that when I was there -- that would be it, but later on -- I didn't go to many meetings.

THE COURT: You would add Steve Roth to the three as management people you heard while attending these meetings; is that correct?

THE WITNESS: Yes.

THE COURT: All right.

MR. LERNER: Your Honor, for clarification, Mr. Lee and Mr. Lieberman are the same person.

THE COURT: Oh. So, it's really only two persons.

THE WITNESS: If I can clarify that --

THE COURT: Lieberman also known as Lee, Katz and Roth.

THE WITNESS: I believe I also mentioned Charles Horowitz, too.

THE COURT: Charles Horowitz. All right. Anybody else you can think of now? Ralph Avni?

THE WITNESS: No.

Ken Rosenthal.

THE COURT: Ken Rosenthal?

THE WITNESS: Right.

THE COURT: All right, Mr. Lerner. I didn't

mean to interrupt you.

MR. LERNER: Thank you.

Q Now, among other things --

MR. LERNER: Strike that.

Q How would the individuals come to arrive at these Opportunity meetings -- prospective investors?

A I really don't know how to answer that question.

Q Well, you sponsored three people in; is that correct?

A Yes.

Q Maybe you can tell us how you brought them in.

A Well, I knew Robert Cody. I knew him from before, from the past.

Howard Beck called me up. He found one of my cards or circulars or letters and Morris came to me to sell me spices -- he has a spice company -- he came to sell me spices which I did buy and he wanted to know more about the meeting.

Q Did you invite them to the meeting?

A No. Morris and his wife came to my office and he asked questions and was satisfied with the answers and gave me a check for $2,000.

Q Did Mr. Beck come to the meetings?

A Yes.

Q Did you invite him?

A He called me up. He was interested in my card and I said, "Come down."

Q He found your card or name and called you and you invited him to the meeting?

A Yes.

Q And Mr. Cody?

A Mr. Cody never went to a meeting. We were friends. I explained to him what it was all about and he spoke to Arty Lee and Ken Rose that and he joined the business.

Q Would you happen to know in general, how people are invited to the meetings?

A I guess basically the same way Howard Beck called me.

Q Is that just your speculation?

A Yes.

Q By the way, the only people who can earn commission by sponsoring other people into the organization would be the field managers and distributors; correct?

A Yes.

Q Aside from the override which you and the other management received; correct?

A Yes.

Q Are distributors and field managers taught how to meet people and invite them to meetings?

A I guess so.

Q Well, you don't know?

A No.

Q Did you have a training session?

A Yes.

Q Did you ever teach one?

A Part of it.

Q Did you hear of the term "prospect"?

A I have heard of the term as a sales term.

In a sales term, a prospect is anyone -- a potential person which applies even in the term of insurance -- anyone going to buy.

Q How is it used in Galaxy?

A A potential investor.

Q Who would attend the training sessions?

A Distributors and field managers.

Q Were they taught how to prospect at these training sessions?

A I don't know.

Q You attended them, did you not?

A No. I taught one.

MR. GOIDEL: I object.

I have remained silent so as not to be obstreperous but I am going to ask that time be used with regard to

the questions asked so the witness knows when he is being asked the question, concerning what period. He is obviously not aware of facts that relate to a great many things and saying "I don't know" and "Maybe so" so I now insist we limit this to specific periods of time.

THE COURT: Well, if we may get back to the original objection, what was the basis for the objection?

MR. GOIDEL: May I have the question read?

(Record read as follows:)

"Question: Were they taught how to prospect at these training sessions?

"Answer: I don't know.

"Question: You attended them, didn't you?

"Answer: No. I taught one."

MR. GOIDEL: I withdraw the objection.

Q When you taught the training session, did you have to attend it to teach it? Did you attend the session to make your representations?

A I was introduced to do a portion of the training and after I did my part of the training I left.

Q But you were there for that portion which you did?

A Yes.

Q Was that -- when did that take place, by the way, do you recall?

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A Every other week, every month; something like that. I believe it was once a month.

Q Once a month?

A I believe so, or possibly every two weeks.

Q When did these training sessions come into existence in Galaxy Food?

A I am not quite sure.

Q Did you ever have to attend any training session as a distributor?

A No.

Q As far as you can -- is it a fair statement that as far as you can recall -- they were in existence since you first joined the company?

A Would you repeat that, please?

Q Were the training sessions in existence as far back as you recall?

A They didn't start the very first week. I don't remember when they started.

Q Were they in existence the majority of the time you were with Galaxy?

A The majority of the time, yes.

Q And they were conducted once a month?

A I believe so.

Q Where?

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A In the office.

Q They were conducted in the same place each time?

A A couple of times in the warehouse. We had our own warehouse.

Q Did you speak at each meeting?

A No -- when you say "meeting" --

Q Training session.

A Again, I did a portion of the training session.

Q Each time one was given?

A Yes.

Q And each time one was given you would never stay for the entire session; is that correct?

A Right.

Q You would stay only for that portion of the session you were responsible for?

A Yes.

Q Who decided whether or not you were speak at the training session?

A Bruce Katz and Arthur Lee.

Q Mr. Lee and Mr. Katz are the ones who run the training session or ran the training program?

A Bruce Katz, yes.

Q He requested that you speak?

A Yes.

Q Did you ever discuss with those people who you brought into the company -- we discussed I believe three -- how to approach people, how to approach potential investors and get them to come to Opportunity meetings?

A Could you go over that again, please?

Q Yes.

We have spoken about three people you brought into the company; Mr. Beck, Mr. Cody and Mr. --

A Reichter,or something like that.

Q Okay. Did you ever discuss with them or inform them of techniques they could use concerning how they could approach people, potential investors, that is, and bring them to the Opportunity meetings or Sunday Step-Up meetings?

A Yes. I explained to them how I would go about it.

Q Did you discuss with them prospecting techniques?

A I don't know -- the word "techniques" -- I explained to them, Howard Beck and Cody, what I would use to find a person interested.

Q What did you tell them?

A I basically explained to them to talk to people they knew or if they don't know, ask them if they are interestedin becoming part of a large company that could possibly earn them a good amount of money.

Q Did you tell them to explain what the company was all about?

A I don't remember if I told them yes or no.

Q Didn't you tell them -- didn't you in fact tell them not to discuss what the company was about but just to get them down to the meetings?

A That's possible.

Q Do you recall doing that?

A No.

Q Let me attempt to refresh your recollection again.

Mr. Kirsch, I refer your attention once again to Plaintiff's Exhibit 2, page 59 and Mr. Garmansky's question to you:

"Question: Did you instruct people you brought in on what to say to people when they walked up to them and on how to try to get them to join Galaxy?

"Answer: I basically told them that the best thing to say was, nothing.

"Question: What do you mean by 'nothing'?

"Answer: In other words, just start talking to them about the possibility of joining and buying a distributorship and if they were interested to bring them down to the business, the opportunity meeting."

Do you recall making that statement now?

A I guess if it's there, I said it. I don't recall it but if it's there I guess I said it.

MR. LERNER: I am at a loss as to how to use the information here. It can be used as past recollection recorded and introduced into evidence.

If it refreshes the witness' recollection I will take his statement but in either event I'd like to get the statement in evidence.

MR. GOIDEL: There's been no objection to it. It's in the record

THE COURT: It is in the record.

MR. LERNER: Let there be an understanding then that what I just read into the record will be part of the evidence in the case.

THE COURT: It is there.

MR. LERNER: Thank you.

Q Now, at the Opportunity meetings, Mr. Kirsch, were there blackboard demonstrations?

A Yes.

Q And didn't the blackboard demonstration consist of the revealing to the audience, the prospective investors there, how they could earn up to as much as $60,000 a year?

A I believe so.

Q You do recall that?

A Yes.

Q And isn't it a fact that when the $60,000 figure was printed on the blackboard there was much cheering and applauding in the audience?

A I believe so.

Q With whom did the cheering and applauding initiate, Mr. Kirsch?

A With whom?

Q With whom.

A I have no idea.

Q Wasn't the cheering and applauding planned, Mr. Kirsch?

A I don't believe it could be planned. I think it is just excitement.

Q Is it your statement that the excitement was spontaneous rather than planned?

A It may have been, yes.

Q It may have been?

A I think that someone started applauding and cheering and others picked up on it.

Q Wasn't there a premeditated plan to cheer and applaud at certain points during the Opportunity meeting?

MR. GOIDEL: Objection unless they specify whose premeditated plan.

MR. LERNER: He can answer the question. It simply calls on his knowledge as to whether or not there was a premeditated plan.

MR. GOIDEL: At the beginning of my opening I made mention of the fact that there are multiple defendants here. I don't want one defendant's conduct imputed to another.

Mr. Kirsch can speak for himself or, if he knows, as to who conjured up a plan.

MR. LERNER: The question is, is he aware of a premeditated plan to applaud and cheer at particular points of the presentation during the Opportunity meetings.

THE COURT: Can you answer that question?

THE WITNESS: Yes.

THE COURT: What is the answer?

THE WITNESS: The answer is not that I know of.

THE COURT: Not that you know of.

Q Let me ask you this, Mr. Kirsch: When the $60,000 figure was put on the blackboard, I think you testified there was cheering and applauding; correct?

A Yes.

Q You have also testified that you attended somewhere between 50 and 75 Opportunity meetings. Was this

$60,000 figure placed on the blackboard at each and every one of those meetings?

A Yes.

Q And every time this $60,000 figure was placed on the blackboard at those Opportunity meetings did cheering and applauding accompany it?

A Yes

Q Where was the $60,000 to be derived from -- the retail or wholesale end of the business?

A Wholesale.

Q From the recruitment of other franchisees?

A Yes.

Q Do you know anybody who ever made $60,000 with the company?

A Personally?

Q Yes.

A No.

Q Do you know anybody who ever made $30,000 from the recruitment or from sponsoring other individuals into the company?

A Personally?

Q Yes.

A I don't know what people earned or didn't earn.

Q I asked you, do you know of any particular persons

who did earn it?

A No.

Q Do you know anyone who earned $15,000 from the recruitment of other individuals into the company?

A Well, I know that George Padilla earned a lot of money. Idon't know --

THE COURT: Who was that?

THE WITNESS: George Padilla --

A (Continuing) -- but exactly how much he earned, I do not know.

(continued next page)

DIRECT EXAMINATION

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BY MR. LERNER: (Cont.)

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Q How do you know he earned a lot, did he tell you?

A Yes.

Q I believe you've testified that the primary purpose for Galaxie Foods was to sell food to customers; is that correct, more or less?

A To --

Q A home delivery service, is that accurate?

A Yes.

Q I think you've also testified that the money which was derived from the franchises, the sale of these franchises, was being put towards the growth of that end of the business; is that correct?

A To my knowledge, yes.

Q If the company could not raise enough money to fulfill that end of the business, could that end of the business ever come into fruition?

A No.

Q Was any provision made to pay back these investors in the event the retail end of the business didn't come into fruition?

A Yes, I believe there was a statement or clause or

rule or regulation. Exactly what it stated, I'm not sure. But I believe there was a statement to that effect, that if it didn't retail some monies would be paid back.

Q Weren't people in Galaxie, potential investors, in fact told that they had a guaranteed investment by entering Galaxie, by purchasing a distributorship?

A Not that I know of.

MR. GOIDEL: I'll object as to what anybody may have told anybody else.

THE COURT: He answered, "Not that I know if."

MR. LERNER: I'd like to mark this advertisement as Plaintiff's Exhibit No. 7, I believe.

THE CLERK: So marked Plaintiff's Exhibit 7 for identification.

xx (So marked.)

BY MR. LERNER:

Q Plaintiff's Exhibit 7, Mr. Kirsch, is a newspaper advertisement.

I wonder if you can tell me whether you've ever seen it before (handing)?

A Have I seen it before?

Q Yes, have you ever seen this or a facsimile of it before?

A Yes.

Q Where?

A In the newspaper article, just like you are showing me.

Q What newspaper have you see it in, Mr. Kirsch?

A I didnt see it in the newspaper. It was shown to me at one of our Board meetings.

Q Who showed it to you?

A Arthur Lee, a couple of the other owners.

Q Can you relate the conversation which surrounded this article, which had to do with the article?

A Not verbatim, but basically it was about the fact that they were going to place an ad in the paper, and this is what was going to be said.

Q In other words, you saw the ad before it went into the paper?

A I saw it just like you are seeing it now.

Q After it was in the paper?

A Yes.

Q Would you read the statement which I have underlined?

MR. GOIDEL: Your Honor, I'll object.

THe whole thing can be offered in evidence.

THE COURT: Yes, why don't you do that?

MR. LERNER: I will offer this document as Plaintiff's Exhibit 7 in evidence.

THE CLERK: So marked in evidence, Plaintiff's Exhibit No. 7.

xxx (So marked.)

BY MR. LERNER:

Q This document states that a 2000 or $5000 guaranteed investment, Mr. Kirsch, makes you a part of the food phone money team.

Now, does that help refresh your recollection as to whether a guaranteed investment was made to the potential investors in Galaxie?

A Well, I guess basically what you are asking is -- could you repeat that question, please, I don't want to rephrase it.

Q I believe my question prior to showing you this article here was whether you were aware of any guaranteed -- guarantees made to potential investors in return for their investment in Galazie?

A Then based upon that article I have to say yes.

Q If you know, Mr. Kirsch, did the contracts which investors signed with Galazie provide for a guarantee?

A No.

Q Did MR. Beck's contract provide for a guarantee?

A No.

Q Mr. Cody's?

A No.

Q Mr. Riker's?

A No. The only guarantee was the three days, I believe it was three days.

THE COURT: What is the three-day guarantee?

THE WITNESS: They had three days to decide whether they wanted to make that investment or not, after they put down the investment.

THE COURT: You mean just a time period?

THE WITNESS: Yes.

I believe it was three days or some time period like that.

BY MR. LERNER:

Q Was that in the contract?

A That was on the application.

Q By the way, Mr. Kirsch, do you know of anybody who requested their money back from Galaxie?

A No.

Q Mr. Kirsch, I'd like to --

MR. LERNER: First I'd like to mark this document which states, "Galaxie Foods, Inc., Distribu application and Agreement form," as Plaintiff's Exhibit No. 8.

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THE CLERK: So marked.

(So marked.)

BY MR. LERNER:

Q Have you ever seen this document or a facsimile of it before?

A Yes.

Q Could you describe what it is, please?

A It's an application.

Q Is that the application that was in use while you were associated with Galaxie?

A Yes.

Q Could you point out then the three-day clause on the application, which permits one to receive his money back?

A I don't see it on here.

Q Thank you, Mr. Kirsch.

MR. LERNER: I'd like to offer this, your Honor, into evidence.

Any objection?

MR. GOIDEL: No.

THE CLERK: Plaintiff's Exhibit 8 for identification now received in evidence.

(So marked.)

BY MR. LERNER:

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7 Kirschenblatt - direct

Q You've also talked about, I believe, Sunday Step-up Meetings; is that correct?

A Yes.

Q Were these Sunday Step-up Meetings in effect during the time you were associated with the company?

A Yes.

Q Would you say from the beginning of your tenure to the end?

A Yes.

Q What was the purpose of the Sunday Step-up Meeting?

A To bring the people together that had been down during the week, and to show them what had been done at the time.

Q Was it also an attempt by the management of the company to get a commitment from these people to join the company?

A I believe so, yes.

Q Did you attend these meetings?

A Yes.

Q How often did you attend?

A Couple of times.

Q Couple? Two?

A Several. I don't know --

Q More than ten?

A Yes.

Q More than twenty?

A I really don't know.

Q Would it help your recollection if I referred you to your prior transcript where you testified around 50 to 75 Sunday Step-up Meetings?

A Sunday Step-up Meetings? Again, the same as of that time, I cannot put a figure on to it.

Q But you did say "About 50 or 75," is that correct?

A Yes.

Q Not ten or twenty. There is a difference. Is it 50 or is it 20?

A I don't believe it was as high as 50.

Q So your answer in the prior transcript was inaccurate?

A I believe at that time it was asked around how many, and then a figure was given to me, 50 to 75.

Q I've read this transcript and I don't see any figure being suggested to you.

Would you like to examine it yourself (handing)?

A As I stated here, without being specific, I still didn't -- I didn't know how many I'd gone to, attended.

It says, "Around 50 to 75."

Q The question is: "Mr. Kirsch, let's go to the Sunday Opportunity Meetings. How many did you attend?"

"Answer: Again, without being specific, I would say around about 50 or 75."

Do you think your recollection was more accurate back in September 1973 than it is today in September, 1974, a year later?

MR. GOIDEL: Note my objection, please.

THE COURT: You consider that argumentative?

MR. GOIDEL: I certainly do. I really don't know that in the scheme of things, 20, 30 or 50 is going to make any less a difference.

MR. LERNER: That remains to be seen. That is a question of evidence.

THE COURT: What is the witness' present best recollection?

You said you didn't think, as I recall, it was as many as 50.

THE WITNESS: Right.

THE COURT: What would be your best recollection? They were held every Sunday throughout the year?

THE WITNESS: Yes.

THE COURT: Twelve months of the year, 52 a year

THE WITNESS: Yes.

THE COURT: How long were you with the company?

THE WITNESS: About a year and a half.

THE COURT: In that year and a half, you don't think you attended fifty?

THE WITNESS: I didn't go to everyone.

THE COURT: I understand. I am saying, you don't think you attended fifty?

THE WITNESS: I don't believe it was that high, no.

THE COURT: Every other week?

THE WITNESS: I would say around every two, three weeks.

THE COURT: Somewhere in the neighborhood of 25 to 35?

THE WITNESS: Possibly, yes.

MR. LERNER: His answer, your Honor?

THE COURT: Twenty-five to thirty-five.

BY MR. LERNER:

Q Where were these meetings held, Mr. Kirsch?

A Basically, at the office and the warehouse.

Q Who were the speakers at these meetings?

A Artie Lee, Charles Horwitz, Bruce Katz.

Q Did you speak at these meetings?

A No.

Q Ever?

A No.

Q In other words, essentially it was the management who spoke at these meetings?

A Yes.

Q Now, while in attendance at these meetings, Mr. Kirsch, and while you were associated with the company as you've described, did you ever hear a speaker exlcaim that he smelled money in the room?

A Yes.

Q Who was that?

A I believe it mighthave been Bruce Katz.

Q Was there -- did this remark generate applauding and cheering?

A I believe so.

Q Did you applaud and cheer?

A No.

Q Did you applaud?

A Yes.

Q What was the reason why you were applauding then, Mr. Kirsch?

A I guess basically because everybody else was applauding.

Q You are applauding -- was your applauding premediated?

A No.

Q In your own opinion, Mr. Kirsch, did the applauding and cheering generate an emotional atmosphere at this meeting?

A Did my applauding and cheering?

Q Did the applauding and cheering which took place generate an emotional atmosphere at the meeting; did you get people excited?

A Possibly.

Q Did you observe any people excited?

A I saw several people laughing and happy, yes.

Q Were distributors required to attend these meetings?

A No.

Q Was the executive board required to attend, the Board of Directors?

A At the end we were, yes. At my end.

Q At the end meetings around the latter part of 1972?

A Yes.

Q By the way, what does money smell like, Mr. Kirsch?

MR. GOIDEL: Objection.

THE COURT: Just skip that, Mr. Lerner.

BY MR. LERNER:

Q Now, when Mr. Katz or whoever it was that said they smelled money in the room -- did Mr. Katz go out into the audience or did any member of the audience come up to him and hand checks over to him; in other words, were checks being passed?

A Yes.

Q Were the denominations on these checks being called out?

A Yes.

Q Did applauding and cheering take place when the checks were being passed?

A Yes.

Q Is it a fair statement that checks not only went from distributors to the management but also from the management to the distributors?

A Yes.

Q Payment for their commissions and recruitment?

A Yes.

Q Isn't it a fact, Mr. Kirsch, that the purpose of handing out these checks at the Sunday Step-up Meetings were to convince the potential investors who attended these

meetings that they, too, could receive checks in such denominations?

MR. GOIDEL: Note my objection. Is he asked whether that was his intention or the intention of another party?

Q Was that the intention of the management of the company?

MR. GOIDEL: Objection, your Honor, there has been no demonstration that he speaks for the management of the company in this action, or even at that time.

MR. LERNER: If he knows, your Honor.

THE COURT: Let's see if he can answer.

I will permit you to ask whether he heard statements of the character that you mentioned. What were the statements? Ask him whether he heard statements made of such and such an effect.

Q Did you hear statements being made to the effect that the reasons why the checks were being handed out or received in at the Sunday Step-up Meetings was to demonstrate to the potential investors at those meetings that they, too, could receive checks in such denominations?

A Not that I remember, no.

Q You don't have a recollection or you can say unequivocally, no?

A No.

Q Why weren't these checks mailed to the recipients Mr. Kirsch, to the distributors?

MR. GOIDEL: Objection, on the same grounds, your Honor. Is he referring to some act of his or an act of a third party?

THE COURT: Yes. You may ask this witness whether he ever heard any discussion concerning the disposition of these checks, that is --

MR. LERNER: I'll try and get at it another way, your Honor.

THE COURT: Yes.

Q Was it your function with management to mail out checks?

A No.

Q Whose function was it?

A To mail out checks?

Q Yes, or to __

A I don't know .

Q -- or to give checks to the distributors who had earned commissions?

A Artie Lee's.

Q Did Mr. Lee sign the checks?

A Yes.

Q DId he have a co-signer?

A Yes.

Q Who was that?

A Either Ken Rosenthal or Ralph Avni.

Q Did you ever overhear, were you ever present at which time Mr. Lee stated that purpose, in essence, that the purpose for handing these checks out at these meetings was to convince the potential investor that he,too, could earn such checks?

A No.

Q Did you ever learn from any of the other management as to why the checks were handed out at meetings rather than mailed to the distributors?

A I never questioned it.

Q Did you ever learn?

A No.

Q Do you have an opinion?

MR. GOIDEL: Your Honor, I'll object to what his opinion is.

MR. LERNER: I believe it's been established that this man is part of the management of the company --

MR. GOIDEL: That is yet to be determined. That is a question of law as to what constitutes

management.

MR. LERNER: Your Honor, he's been established as a director, a member of the Board of Directors, and a vice president in charge of marketing.

How much further must we go to point out the fact that this man is a part of management?

THE COURT: Let me ask you this: I'm not sure what the purport of his testimony is as it now stands.

Are you saying that during your time with his organization nothing came to your attention by way of discussion with relation to this matter that Mr. Lerner is inquiring about, the disposition or distribution of these checks? Is that what your testimony is, you never heard such discussions at any meetings of officers or Board of Directors?

THE WITNESS: No.

(continued next page.)

Joe flws.

THE COURT: That's what the man says.

BY MR. LERNER:

Q Were there regular Board of Directors meetings Mr. Kirsch?

A Yes.

Q Did you attend those meetings?

A Yes.

Q Were policy decisions discussed concerning Galaxy at those meetings?

A Policy was discussed basically by the officers and then given to us.

Q You were a Vice President, weren't you, Mr. Kirsch?

MR. GOIDEL: I am going to interrupt for a moment. I wish your Honor would let me be heard on this subject.

There is a question no matter what terminology is used as to what constitutes the Board of Directors of this corporation.

MR. LERNER: Mr. Goidel continues to interrupt my questioning of this witness. The witness can answer whether he was a Vice President or not. He doesn't need Mr. Goidel to come up here and espouse as to what constitutes a member of the Board of

Directors of the company.

THE COURT: Reserve it until cross-examination, Mr. Goidel. He stated what his official title was. If you want to inquire into the underlying duties he performed, or whether he attended meetings, go ahead.

BY MR. LERNER:

Q Mr. Kirsch, how many Board of Directors meetings took place while you were a member or associated with Galaxy?

A One a week.

Q One a week?

A Yes.

Q And you were there for --

A Basically, a little over a year.

Q So you attended approximately fifty meetings?

A Yes.

Q During the time you attended those meetings, was there any discussion in your presence as to what would be said at Opportunity Meetings or Sunday Step-Up Meetings?

A As far as what was to be said?

Q That's right.

A We discussed, or it was told to us that they were going to discuss the retailing and show people how they get customers, how they acquire customers, how they could earn money.

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Q You could earn money through the recruitment of other franchisees, could you not?

A Yes.

Q Was that discussed at the meetings?

A Yes.

Q Was it discussed in your presence?

A Yes.

Q Would you tell us what was said?

A Well, we went over the marketing plan as it was, if they were to acquire a sponsor in field manager, they would acquire so much money.

Q Was there a discussion as to how they would sponsor in field managers?

A No.

Q Never any discussion as to that?

A No.

Q Was there any discussion as to what would take place in training sessions conducted by the company?

A No.

THE COURT: Were any minutes kept of those meetings?

THE WITNESS: Not that I know of.

Q Did you ever inquire from any other member of management as to why cheering and applauding was taking place

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at the Opportunity and Sunday Step-Up Meetings?

A No.

Q Did you ever inquire as to why checks were handed out at the Sunday Step-Up Meetings?

A No.

Q Did you ever inquire as to why Mr. Katz stated he smells money in the room?

A No.

Q Did you ever hear of the terminology "money hum"?

A Yes.

Q Where did you hear it?

A At Galaxy.

Q Was it used in Galaxy?

A Yes.

Q Who used it?

A The distributors.

Q The distributors used it?

THE COURT: The distributors used it?

THE WITNESS: Yes.

Q What was a money hum?

A That was just a silent humming, and then at the end they would jump up and yell "Money!"

Q They would jump up? Would prospective investors use it?

A Not that I know of.

Q Did you ever inquire as to why the money was used at meetings?

A No.

THE COURT: Did I understand they would jump up and wave money?

THE WITNESS: No, just jump up and yell "Money!" the word money.

Q Did you ever see any of the management throw money on the floor?

A No.

Q Were statements made at the Sunday Step-Up Meetings, Mr. Kirsch?

THE COURT: What was that?

MR. LERNER: I didn't finish the question yet, your Honor. I am just thinking. Excuse me. Strike my words.

Q Focusing your attention back on the checks that were being handed out at the Sunday Step-Up Meetings, when these checks were handed out, did you hear speakers say that the recipient was with Galaxy for only a few short weeks?

A Yes.

Q Wasn't that statement made, Mr. Kirsch, to make potential investors believe they could earn big checks

soon after joining Galaxy?

MR. GOIDEL: Objection, your Honor. Same objection as previously stated.

THE COURT: The statement, unfortunately, is argumentative in form.

MR. LERNER: I will change the "wasn't" to a "was."

Q Was the statement made, Mr. Kirsch, to make potential investors believe that they could earn big checks soon after joining the Galaxy organization?

MR. GOIDEL: I will object, your Honor, unless it is established whether he made the statement or whether he was told why a statement was being made.

THE COURT: Ask him if he knows who made such a statement.

Q Do you know who made the statement, Mr. Kirsch?

A Could you repeat the statement?

Q The statement was that speakers would say -- a check was handed out to a distributor, that he was only with the company for a few short weeks.

A Who made the statement?

Q Who made those statements?

A Arthur Lee and Bruce Katz.

Q Do you know what the purpose was for their

making the statement?

A I would assume just to explain that they have only been with the business a few short weeks.

Q Was the import of the statement, Mr. Kirsch, to convince potential investors that they, too, could earn big checks after only being with the company for a few short weeks?

MR. GOIDEL: Your Honor, I object, unless the party who made the statement is asked what his import was. He cannot guess or conjecture.

MR. LERNER: If he knows he can answer the question.

THE COURT: I think that objection is well taken. These are other statements now made.

MR. LERNER: That's correct, your Honor.

THE COURT: All right. Ask him whether he ever heard some other statement, and then we will find out who said it.

MR. LERNER: He has testified that he has heard the statement.

Q I am asking you, Mr. Kirsch -- I will rephrase my question -- did you ever overhear or were you present during any discussions at which management discussed the reasons why that statement was made, at the Sunday Step-Up Meetings?

A No.

DIRECT EXAMINATION

BY MR. LERNER: (Continuing)

Q Now, at the Sunday step-up meetings, Mr. Kirschenblatt, did the speaker request that the potential investors or those guests at the meetings come to the front of the room and stand in line?

A Yes.

Q And when they were brought up to the front of the room, what were these people asked? Were they asked their names, where they worked ?

A Right.

Q And isn't it a fact that these people were also asked not whether they were joining Galaxie or not joining Galaxie, but how they were coming in to Galaxie, either as a distributor or a field manager?

A Yes.

Q Now, when a person indicated how he was joining, wasn't there usually cheering and applauding?

A Yes.

Q And wasn't this sequence of events known as "closing the deal"?

A I believe so.

Q Wasn't the purpose of it to get a commitment from the franchisee that he was joining either as a field

manager or distributor and not giving him a choice to say, "No, I don't want to join"?

MR. GOIDEL: Objection unless we know whose statement it was. If it was his statement, he can tell the purpose, if not, then he cannot.

THE COURT: Yes, I sustain that objection.

MR. LERNER: Is the objection sustained, your Honor?

THE COURT: Yes.

Q What was your opinion, Mr. Kirschenblatt, as to why that statement was made?

THE COURT: Irrelevant.

MR. GOIDEL: Objection.

THE COURT: Irrelevant. It is irrelevant. What we want to know here is, Was he privy to discussions about the subject?

MR. LERNER: Your Honor, it is our contention once again that this man is a member of the management of the organization; that his tacit recognition and tacit silence of statements made at these Sunday step-up meetings means he was in agreement with those statements.

THE COURT: That is legal argument.

MR. LERNER: His opinion would be important

with respect to that argument.

THE COURT: I question that. Opinion is rarely important.

MR. LERNER: If he felt --

THE COURT: What is important is what he, of his own knowledge, knows about the operations, not what his opinion may be as to what others are saying.

MR. LERNER: Well, your Honor, I believe his intent would be in question with respect to his opinion, his silence after hearing the question of whether --

THE COURT: These are all matters you can argue about in terms of the Court inferring certain conclusions, possibly.

I am simply saying that the more specific the testimony is the more helpful it is to the Court in making those inferences.

A statement of opinion in these circumstances is not very helpful unless you are prepared to say the statement of opinion is a disguised way of saying he knows the purpose.

Q Going back to the training sessions for a moment, Mr. Kirschenblatt, did you ever hear the phrase GTC?

THE COURT: "L"?

MR. LERNER: "G".

A In the training session?

Q Yes.

A No.

Q Did you ever hear th phrase used while you were at Galaxie?

A Yes.

Q Who used it?

A Specifically, I can't remember.

Q Do you recall whether it was someone from management?

A I don't remember.

Q What does the phrase mean, if you know?

A Well, from what I understand it meant was to "Get the check."

Q "Get the check"?

A Yes.

Q What does "Get the checks" mean?

A That means, "Close the sale."

Q At the training sessions were distributors and field managers taught how to get the checks?

A Not that I'm aware of.

Q What would you do in the event that a potential

investor, interested in joining the company, did not have sufficient funds to join?

MR. GOIDEL Objection. That is a hypothetical question. There are no facts to suggest that circumstance.

THE COURT: Yes. You cannot approach the factual in a situation where someone said they wanted to join and didn't have the money.

Q At the training was a hypothetical situation brought to the attention of those present where they might come across an individual who was interested in joining the company but did not have sufficient funds to do so?

Was that type of situation presented at the training sessions, to your knowledge?

A Not to my knowledge.

Q Was that type of situation ever presented to you?

A No.

Q Was it ever presented to you in reali y while you were at Galaxie?

A No.

Q Well, let's go over this carefully, now, Mr. Kirschenblatt, because the answers here are pretty important.

You sponsored three people into the company;

correct?

A Yes.

Q Did Mr. Cody have funds immediately available to join?

A Yes.

Q And Mr. Reichter?

A Yes.

Q And Mr. Beck?

A Yes.

Q Isn't it a fact, Mr. Kirschenblatt, that Mr. Beck indicated to you that he did not have sufficient funds to come into Galaxie?

A Not that I know of.

Q I guess we'll draw on the Bible again.

MR. LERNER: If your Honor will give me one moment, please.

THE COURT: Surely.

(Pause)

MR. GOIDEL: Would your Honor have any idea about what time we will adjourn this evening?

THE COURT: It so happens that this afternoon I will have to close down here at four. I have to go somewhere else and then wait for the jury to make up its mind.

MR. GOIDEL: I assume we'll continue every morning, say at ten o'clock, unless we hear to the contrary because of some other commitment?

THE COURT: That's the idea.

DIRECT EXAMINATION

BY MR. LERNER (CONTINUING):

Q Isn't it a fact, Mr. Kirschenblatt, that you suggested to at least one individual who was interested in joining Galaxie but didn't have sufficient funds that when seeking a loan from a lending institution he falsify the purpose for which he needed the loan?

A No.

Q That's not a true statement?

A No.

Q Once again, do you recall testifying before the --

MR. GOIDEL: This is improper direct examination. It would even be improper cross-examination.

If there's a question and answer let him read it and ask the witness about it.

THE COURT: All right. We have been a little loose in our practice about that.

The practice is, if you are going to confront a witness with a prior inconsistent question and

answer, you ask him, "On a prior occasion were you asked this question and did you give this answer?"

Now, that's the way it is done, according to the Bible of the trial lawyers, so let's follow it.

MR. LERNER: Thank you, your Honor.

Q Mr. Kirschenblatt, on a prior occasion, specifically, September 14, 1973, were you asked this question:

"Question: Was it not a fact, Mr. Kirschenblatt, that you went to the bank with Howard Beck to file a loan application to take out a bank loan?"

And did you give this answer:

"Answer: As you were saying that I was trying to recollect, I remember going to the bank in Great Neck."

Did you give that answer?

A Yes.

Q Do you recall this question?

"Question: So, it's true that you did suggest to Howard Beck that he take out a bank loan and it is true that you went to the bank with him?"

"Answer: I stand corrected, yes."

Did you hear that question and did you give that answer?

A Yes.

Q "Question: Now, did you instruct Mr. Beck what to put down on that bank loan application form that he filed with the bank?"

Do you recall that question?

A Yes.

Q Do you recall this answer:

"Answer: We worked on the application together."

A No.

Q You don't recall that answer?

A No.

Q Let me go on then.

A Well, if I can interject, when I said, "I stand corrected," I didn't mean on the whole point. The point was--

Q Let me finish the point.

MR. GOIDEL: So far the statement which is apparently tried to be impeached is, "Did you tell somebody to falsify a statement," and so far nothing has been asked to alter the testimony given by the witness.

MR. LERNER: I am getting up to it.

THE COURT: All right.

I've got the background, for what it is worth.

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What is the question?

MR. LERNER: I'm getting to it.

Q "Question: O.K. What did you instruct Mr. Beck to put down on that bank loan application?

"Answer: To take it out for personal reasons.

"Question: For what purpose, what kind of personal reasons?

"Answer: I don't remember offhand. Several personal reasons we discussed.

"Question: Furniture, medical -- what was the personal reason?

"Answer: Yes, furniture, furniture."

Do you receiving th se questions and giving those answers?

A If it's in the record --

Q Do you recall?

A Yes.

Q Well,Mr. Kirschenblatt, which statement do you now stand by, the statement you gave here today or the statement which you gave then?

A I stand on the statement that -- in that instance -- also, where I said, "I stand corrected," and I was making reference -- the question was did I in fact

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take Mr. Beck to the bank and falsify an application? and at that point I said, "I stand corrected."

He asked me to help him. I did help him. He asked me to drive him to the bank, which I did.

Q Did you suggest to at least one individual who was interested in Galaxie that he apply for a loan to an institution, that he falsify the loan, and your answer is negative, and does that conform with your testimony of September 14th?

A I told him if he wanted to take a loan he could say that it was for personal reasons.

(Continued on the next page.)

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DIRECT EXAMINATION

BY MR. LERNER: (Continuing)

Q Do you stand by those answers?

A He didn't falsify the application. He used it for personal reasons. His personal reasons were his personal reasons.

THE COURT: Were you the author of the suggestion that the personal reason be for procuring furniture?

THE WITNESS: He asked, "What personal reasons?" and I said, "Put down personal reasons." He said, "Like furniture?" I said, "That's one reason."

Q Do you recall this question, Mr. Kirschenblatt, page 69 of Exhibit 2:

"Question: Did you tell Mr. Beck to put down the purpose of the loan was not to join Galaxie but was for furniture?

"Answer: I told him that in all likelihood the best thing to do was to put down for furniture, yes."

Now, Mr. Kirschenblatt, do you feel that your statements then are in conformity with the answers to the questions I posed to you here today?

THE COURT: Wait a minute now. That's not

important.

MR. LERNER: I withdraw that question.

Q Mr. Kirschenblatt, do you recall preparing an affidavit, under oath, in this action, which is dated November 3, 1973?

MR. LERNER: Let me mark this.

Would this be made part of the Court's record? It is in this action?

THE COURT: Well, it would be more convenient perhaps to identify it.

That's your copy there; is that right?

MR. LERNER: Yes.

THE COURT: So the original would be in the court file.

MR. LERNER: Correct.

Can we mark the original?

THE COURT: From the standpoint of reference it might be a good idea to identify it.

MR. LERNER: It is dated November 3, 1973, and it is the affidavit of Irwin Donald Kirschenblatt.

Shall we mark the copy? The copy was provided to me by counsel for Mr. Kirschenblatt.

Any objection?

MR. GOIDEL: To having it marked?

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No.

THE CLERK: It can be deemed marked.

THE COURT: If you want to mark your own copy for your own purposes, we will deem the affidavit which is in the Court's file of Irwin Donald Kirschenblatt, sworn to November 3, 1973, as Plaintiff's Exhibit next in order, whatever that is.

THE CLERK: 9, your Honor, 9 coming up.

MR. LERNER: Would you mark that for me?

THE CLERK: Sure.

So marked, Plaintiff's Exhibit No. 9 for identification.

(So marked)

MR. LERNER: Thank you.

Q Let me show you this affidavit, Mr. Kirschenblatt, and I ask you if this is a copy of the affidavit which you signed and swore to under oath.

(Pause)

A Yes.

Q It is, is that right?

A My signature is not there, but, yes.

Q This is a copy. Would you like to see the original?

A No, it's o.k.

Q This is a copy of the one you signed?

A Yes.

Q It is your testimony now, as I understand it, Mr. Kirschenblatt, that you drove Mr. Beck to the bank?

A Mr. Beck asked me to help him out --

Q Did you drive Mr. Beck to the bank?

A Yes.

MR. LERNER: May the witness see his affidavit, your Honor?

THE COURT: Yes.

(Document handed to witness.)

Q Look at paragraph 18 on page 5 of the affidavit and would you read it aloud, please.

A It says: "To this end and so as to avoid any misunderstanding, I categorically deny that I ever made any false or improper statement to any individual in order to induce him to make any investment" --

Q Continue.

A (Continuing) -- "and I did not at any time aid, assist or endeavor to convince any person to make any loan from any bank nor to make any improper or false statement to any lending institution; I did not drive anyone to any bank" --

Q "I did not drive anyone to the bank." Was that

your statement then?

A Yes.

Q Was that accurate?

A The words, "to drive anyone to the bank" -- as you stated before -- I didn't go into the bank and help him.

Q Did you drive Mr. Beck to the bank?

A I gave him a lift.

Q Do you consider that affidavit made under oath to be an accurate reflection of what you did with Mr. Beck?

A I misunderstand the question. Could you repeat it?

Q Yes. Did you drive Mr. Beck to the bank, is the question.

A Yes.

Q Do you believe the statement in your affidavit which says, "I didn't drive anyone to any bank," to be an accurate reflection of what you did with Mr. Beck?

A No.

Q It is not true, is it?

A No.

Q Did you suggest to Mr. Beck at a time when you knew he wished to make an investment in Galaxie, that he go to the bank and inform the bank that the loan was to

be taken out for furniture?

A If I informed him?

Q Did you suggest to him that he inform the bank --

A No.

Q You did not suggest that to him?

A No. He asked me.

Q What did he ask you?

A "If I go to the bank, what should I do?"

Q What did you tell him?

A "Whatever you feel you have to do."

Q Did you tell him it would be a good idea to suggest to the bank that the loan is being taken out for personal reasons, namely, furniture?

A I said, "Personal reasons."

Q Did you say for furniture?

A No. He asked me.

Q Who?

A Beck.

Q He asked you if it was for furniture?

A Yes.

Q Didn't he know the purpose of the loan?

A Yes.

Q What was the purpose of the loan?

A For Galaxie.

Q Was that furniture?

A No.

Q Did you suggest that he tell the bank it was furniture?

A No.

Q I refer you to this question and answer:

"Question: Did you tell Mr. Beck to put down the purpose of the loan was not to join Galaxie, but for furniture?

"Answer: I told him in all likelihood the best thing was to put down for furniture, yes."

Was that statement accurate?

A Yes.

Q Is it accurate today?

A Yes.

Mr. Beck asked me if he should put down furniture, and I said, "Put down personal reasons."

Q That's not what the statement says.

Again I refer you to paragraph 18 of the affidavit where you state:

"I did not at any time aid, assist or endeavor to convince any person to make any loan from any bank nor to make any improper or false statement to any

lending institution."

Is that statement accurate with respect to Mr. Beck, Mr. Kirschenblatt?

A As it states in here, as you just read --

Q As I just read it, is it accurate with respect to Mr. Beck.

A I did not at any time aid, assist, or endeavor to convince -- I didn't endeavor to convince him. He asked me, 'If I take out a loan for personal reasons should I put down for furniture?"

Q Page 68 of the transcript, and tell me whether you heard the question and gave the answer.

"O.K. What did you instruct Mr. Beck to put down on that bank loan application?

"To take it out for personal reasons.

"Question: For what purpose? What kind of personal reasons? Medical?

"Answer: I don't remember offhand. Several reasons we discussed.

"Question: Furniture, medical, what was the personal reason?

"Answer: Furniture, furniture."

A Yes.

Q Is that accurate?

A Yes.

Q Did you ever hear of a company called Kaye Enterprises?

A Yes.

Q What is it?

A That's my company.

Q Were you operating or associated with this company during the period between September 1971 and January 1973?

A No.

Q You were not?

A No.

Q Did you know anybody who was associated with it then?

A It's a company that I formed but let go.

Q When was it formed?

A It was formed in February or January of 1971.

Q You formed it? You were a promoter of the company.

A It's my company.

Q Is it a corporation?

A No.

Q But you were associated with it during the period of time in which you formed it, were you not?

A Yes.

Q Did you tell Howard Beck to state on his loan application that he was presently employed by Kaye Enterprises?

A No.

Q You did not suggest that to him?

A No.

THE COURT: Mr. Lerner, would you have very much more to go with this witness or not?

MR. LERNER: Your Honor, I have about another half hour.

THE COURT: I think under the circumstances we will adjourn, then, until ten o'clock tomorrow morning. I have some other scheduled things to take care of, so we will see you at ten.

MR. PADILLA: Before the adjournment, I'd like to be heard for a second, if I may.

Again, I'm appearing in this court pro se, and I'm up against an institution which has practically all the money in the world, except for a little change here and there and I'm having a hard time preparing the case for myself.

There are several people I need to subpoena, and I'd like to ask the Court for some help in my

fight.

How do I subpoena these people? I can't just telephone them to come in because they are ex officers of Galaxie Food, or people, members of the executive board, and also, today, for example, when I first came in I found out that the people who were going to be called, the witnesses for the SEC, were going to be Mr. Kirsch and Mr. Lee. I wasn't informed of this until I heard the conversation between the two parties.

I feel that since the attorneys for the SEC saw fit to tell Mr. Goidel, why didn't they inform me? I think it is only fair I be informed of those things also.

(Continued on the next page.)

THE COURT: Well, they are in a way clients of Mr. Goidel, as I understand it.

MR. PADILLA: However, my name has been mentioned in the testimony. I do intend to cross-examine.

THE COURT: Let's take one thing at a time.

If you feel that you need subpoenas to have certain people come here, those can be issued by the Court to have them come here, do you understand? You will have to arrange to serve these people or pay the marshal, one or the other.

MR. PADILLA: Where do I start?

THE COURT: Go down to the Clerk's Office, the forms are there. When do you want those people to come?

The usual thing to do is to fill it out for, let us say, the next day and then call them up and tell them you will let them know when they have to come so they don't sit here and wait day after day.

MR. PADILLA: However, the people whom I am talking about, again, are people who were officers --

THE COURT: I heard you the first time.

MR. PADILLA: I personally do not know the whereabouts. Where do I get in touch with these people?

THE COURT: That's the problem.

MR. PADILLA: This information is available. Some of these people were defendants in this case but

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were some of those who consented.

THE COURT: There is no way in which you can get that information from other counsel?

MR. PADILLA: I don't know this. I don't know if they would give it.

THE COURT: Why don't you try and let me know tomorrow?

MR. GOIDEL: Ten o'clock tomorrow morning, your Honor?

THE COURT: Yes.

(Whereupon, the trial was continued to October 1, 1974 at 10:00 A.M.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

SECURITIES EXCHANGE COMMISSION, :

Plaintiff, :

-against : 73-C-1742

GALAXY FOODS, et al., :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 1, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

ALLAN LERNER, ESQ.
HARRY GARMANSKY, ESQ.
REGINA MYSLIWIEC
JULIA WILLIAMS
Attorneys for SEC

ALVIN GOIDEL, ESQ.
Attorney for Defendants Arthur Shebach and Irwin Kirschenblatt

GEORGE PADILLA
Pro Se

THE CLERK: Securities & Exchange Commission against Galaxy Foods, et al.

I don't see Mr. Padilla here, your Honor.

THE COURT: I don't think we can delay matters on that account.

Are you ready to proceed?

MR. LERNER: I am ready, your Honor.

THE COURT: Do you want Mr. Kirschenblatt to resume the stand?

MR. LERNER: Yes, your Honor.

THE COURT: Mr. Kirschenblatt, will you resume the stand.

D O N A L D I R W I N K I R S C H E N B L A T T ,

previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. LERNER (Continued):

Q Mr. Kirschenblatt, yesterday we briefly touched on the question of food delivery and commissions that were to be earned by the distributors and field managers upon the acquiring of customers and sale of food to them.

I wonder if you might explain to the Court what the plan was which Galaxy had arranged for the payment of commissions to people or to distributors or field managers who acquired customers for the sale of food.

A Well, the way it was supposed to work was that they would acquire customers, whatever means they used --

THE COURT: When you say, "They," who do you mean?

THE WITNESS: The distributors.

THE COURT: And the field managers?

THE WITNESS: Yes.

THE COURT: Both categories?

THE WITNESS: Yes. They would acquire customers and all they would do is call into the company and tell the company what the customer wanted, or the customer could call in itself and tell what they wanted.

It would be done by code number, it would be picked and then delivered.

As far as payment, payment was made on a percentage of the order that was delivered to the customer, depending if they were a field manager or distributor, whatever percentage they earned.

Q Do you recall what the percentages were when you first joined the business?

A No, I don't.

Q Maybe I have something that can refresh your recollection.

Do you recall this document which has been previously

marked Plaintiff's Exhibit 5?

A Yes.

Q It was entitled "The Distributors Business Manual."

A Yes.

Q I believe if you look at page 2 -- this was in effect, by the way, when you were with the company?

A Yes.

Q Look at page 2, maybe that will help your recollection.

A It says here on page 2, 5 percent commission. He's working on a 5 percent commission.

Q Is he talking there about distributors, field managers or about salesmen?

A This is a salesman.

Q That would be the salesman?

THE COURT: Meaning a 5 percent commission to be paid to salesmen?

THE WITNESS: Yes.

Q Did salesmen own a franchise or interest in the company?

A No.

Q Salesmen were those people hired by distributors or field managers, correct?

A Yes.

Q And they would work strictly on a commission of 5 percent?

A Yes.

Q It's my understanding that the distributors and field managers themselves would receive an override or commission on what the salesmen did, is that accurate?

A Yes.

Q If they brought in their own customers they would receive a direct commission on the basis of the number of customers they brought in, is that correct?

A They would receive the entire commission, percentage of the entire commission.

Q Just so we have a complete picture of what went on, if an individual came in as a distributor and he was able to acquire ten customers and each of those ten customers bought $25 of food each week, he would receive a specific commission based upon that $25, is that right?

A Yes.

Q Times ten?

A Right.

Q And, of course, you got a larger commission if you came in as a field manager -- if you came in as a distributor rather than as a field manager; is that right?

A Yes.

Q Because the cost of a distributor's interest was greater than that of a field manager's?

A Yes.

Q A distributor could then go ahead and hire salesmen, is that right?

A Yes.

Q And those salesmen, if they acquired customers, the distributor would be entitled to an override on the amount of goods purchased by those customers; is that right?

A Well, in essence, yes.

In other words, the distributor would bring his own customers in and get the full percentage. If a salesman acquired the customers, in essence what is happening, the distributor is giving away part of his commission and therefore taking the difference for himself.

THE COURT: This five percent that I heard mentioned here is the commission to be paid to a salesman, you say that was part of a larger rate of commission?

THE WITNESS: Yes.

THE COURT: What was the larger rate?

THE WITNESS: I believe it's something like 15 percent for the distributor.

THE COURT: Do you want to make sure by refreshing your recollection?

THE WITNESS: It says the investment which he received is 15 percent initially. The field manager receives ten percent, so it was 5, 10 and 15.

Q Just so we are not confusing anybody, we are speaking now about the retail aspect of Galaxy as opposed to the recruitment of other franchisees or the wholesale aspect of Galaxy; is that right?

A Yes.

MR. LERNER: I would like to offer this document, Plaintiff's Exhibit 5, in Evidence.

(Mr. Padilla is now present.)

MR. GOIDEL: As against which defendant?

MR. LERNER: As against all defendants.

MR. GOIDEL: Your Honor, I don't think there has been any relevancy shown between this document and Mr. Kirschenblatt. To that end I would object to its introduction. He hasn't been shown to have prepared it or have worked on it or have done anything in relation to it, and if there is anything wrong with it, which I don't know, but if there is anything wrong with it, it certainly cannot be imputed at the moment to Mr. Kirschenblatt.

MR. LERNER: Mr. Kirschenblatt was fully cognizant of the document when he worked at Galaxy. He can look through it now and determine to the best of his knowledge if there are any misstatements or additions or deletions in this document, and if he has seen it before he certainly can testify to its existence. That's all I am asking that it be introduced for, your Honor.

MR. GOIDEL: Your Honor, my objection stands.

THE COURT: In your role as Vice President of Marketing, did you have some sort of supervision over these distributors and field managers?

THE WITNESS: No, sir.

THE COURT: You did not?

THE WITNESS: No.

THE COURT: Exactly what was your role as Vice President of Marketing?

THE WITNESS: My role basically was just as a buyer. I spent all my time -- that's why I wanted to clarify the point on meetings, I never went to many meetings because my time was spent researching the business, finding out the products to carry, to set up the catalog and make an arrangement to buy the products.

My role was strictly that of a buyer. I spent all my time finding the products to buy, what sizes,

what prices to charge for them, what promotion deals were offered and who to see.

THE COURT: When you came into the organization were you eventually supplied with a copy of the document such as Plaintiff's Exhibit 5 for Identification?

THE WITNESS: Yes.

THE COURT: Was that a manual that you used in the course of your work in marketing?

THE WITNESS: No.

THE COURT: In any sense?

THE WITNESS: No.

THE COURT: Why was it supplied to you?

THE WITNESS: It was given to all the vice presidents. We just all had a copy.

THE COURT: I will receive it in evidence.

THE CLERK: Plaintiff's Exhibit No. 5 for Identification now marked in Evidence.

(So marked.)

BY MR. LERNER:

Q Mr. Kirschenblatt, when you first became associated with the company, did members of the Executive Board, or the defendants in this case, make representations to potential investors that they could earn commissions in a manner essentially stated in this document, Exhibit 5?

A Did they make --

Q Representations. Did they essentially state to those potential investors that you can make commissions based upon the --

A The five percent, 10 percent and 15 percent?

Q As we have just discussed here.

A Yes.

Q Did they state that at the very beginning to the organization?

A To the best of my recollection, yes.

Q Did they also tell potential investors that they would at one point distribute eight to ten thousand customers to the distributors and field managers so they could acquire commissions on those customers?

A I don't understand the question.

Q Well, did there come a time when representations were made by the management, including the defendants here today --

MR. GOIDEL: Objection, your Honor.

Are you including Mr. Kirschenblatt, sir?

MR. LERNER: Yes, I am.

THE COURT: All right. Withdraw the objection?

MR. GOIDEL: I will withdraw the objection as long as Mr. Kirschenblatt understands, your Honor, that

when he is asked a question of that type it is referring to him specifically.

THE COURT: Did you say Kirsch, by the way?

MR. GOIDEL: Kirsch.

THE COURT: Which do you prefer?

THE WITNESS: My real name is Kirschenblatt.

(Continued on next page.)

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THE COURT: But you use Kirsch normally?

THE WITNESS: When people don't understand Kirschenblatt. It's too long of a name to say so they shorten it to Kirsch.

DIRECT EXAMINATION

BY MR. LERNER: (Cont.)

Q Do you have any objection if I call you Mr. Kirsch?

A Not really.

THE COURT: For purposes of the case --

THE WITNESS: It's easier.

Q Were you aware that representations were made to potential investors that there would come a time when Galaxy would distribute eight to ten thousand customers to the distributors and to the field managers so that they at one time may earn commissions on their customers' purchases of good?

Do you understand the question?

A No.

Q Was there ever an indication by management that an accumulation of eight to ten thousand customers would take place by the management?

A It was discussed that the management needed eigh to ten thousand customers before they would pay commissions.

Q DId they ever tell field managers, distributors

and prospective investors that those eight to ten thousand would be distributed amongst them?

A No.

Q You have no recollection of that at all?

A I never said that, and I was never at these meetings where I heard that.

Q Did you ever hear it stated at an Opportunity Meeting?

A No.

Q Did you ever hear it stated at a Sunday Step-up Meeting?

A No.

Q You are quite sure of this now?

A You are talking about three years ago. I can't remember exactly. I would say no.

Q You left at the end of '72?

A Right.

Q At the --

A I was strictly retail. I went to very few if any -- I was strictly into putting together a catalog and setting up the purchasing arrangements.

Q Obviously, we are only talking about the meetings at which you attended.

A That was at the very beginning.

Q At the Opportunity meetings at which you attended and the Sunday Step-up Meetings at which you attended, did you ever hear any speaker state that Galaxy will distribute eight to ten thousand customers amongst the franchisees?

A No.

Q Never heard that?

A No.

Q But you have testified, I believe, and correct me if I'm wrong, that as soon as the food program started, commissions would be paid out to distributors and to field managers based upon the number of customers they brought in; is that correct?

A Yes.

Q Did there come a time when that policy changed?

A Yes.

Q When was that?

A Basically, just when the retailing started. When the distributors started acquiring the customers, like I said before, it was discussed that we could not pay them their commission, that the company needed that, whatever it was, cushion, eight to ten thousand customers, they needed that money to get them into operation so they could not pay a commission.

Q In other words, at the beginning they told the

franchisees or the investors that they would receive a commission, then there later came a time when the company said, "You can't have that commission even though you bring in customers"?

Is that accurate?

A Yes.

Q Do you recall specifically when that time was, when it occurred?

A I would say on or about the latter part of '72, October, November.

Q And you were with the company at that time?

A Yes.

Q And the reason was that the company couldn't afford to pay out commissions?

A I don't know the real reason behind -- whether it could or could not afford to. The reason told me was that they needed that margin to get them into full operation, to help them along.

That's what was told to me.

Q Who told you that?

A Artie Lee and Charlie Horowitz.

Q Do you remember where they told you that?

A No.

Q Were you sitting in his office?

A I don't remember exactly.

Q Have you heard the term "pilot program"?

A Yes.

Q When did you first hear it in connection with Galaxy?

A I would say on or about the latter part of '72.

Q What did the terms "Pilot Program" mean in connection with Galaxy?

A As I understand that, as explained to me, this was to see and to make sure that the operation really did work, and they were just testing it to make sure that everything we did was perfect; that this would get us into the full operation.

Q It's a fact, is it not, that no commissions were paid out during the pilot program?

A Yes.

Q When you first became associated with the company, Mr. Kirsch, do you recall any speakers at the Opportunity or at the Sunday Step-Up Meetings state to potential investors or field managers that the company would "begin with a pilot program"?

A No.

Q Isn't it further a fact, Mr. Kirsch -- I believe

you've also testified that the company announced sometime late in 1972 that no commissions would be paid until the company accumulated eight to ten thousand customers; is that correct?

A Yes.

Q Was that revelation ever made to the investors when you first associated with the company?

A When I first became associated back in '71?

Q That's right.

A No.

Q The first time it was told to potential investors and investors in the company was in late 1972; is that correct?

A Yes.

Q Do you know how that decision was arrived at?

A No. It was just told to me.

Q Who told it to you, Mr. Kirsch?

A Artie Lee, Charlie Horowitz.

Q Do you know whether or not there was a meeting amongst Mr. Lee, Mr. Horowitz and any other members of the executive board or directors or management or officers of the company at which this decision was arrived at?

A There must have been, but I don't know of any.

Q You didn't know about it?

A No.

Q With respect to the delivery of food items, do you recall speakers stating, when you first became associated with Galaxy that there only be a limited area of delivery of food items?

A I don't believe that was ever mentioned, no.

Q Did there come a time when it was mentioned, while youwere associated with Galaxy?

A I wasn't attending the meetings at the end of the year, at the end of '72. I couldn't say it was mentioned or not.

Q You never heard that before, that is before today?

A No.

Q Do you recall any speakers at the Opportunity or Sunday Step-up Meetings stating that deliveries would be made throughout the New York area?

A No.

Q You never heard them say that.

Did you ever hear any discussion as to the extent to which deliveries would be made of food items?

A Not at the Opportunity meetings, no.

Q Did you hear any discussion at all?

A It was, I guess, understood that we were

delivering to all the areas, that we were setting up a catalog -- that I was to set up a catalog in reference to all the areas, and that's what I was looking for. That's why I spent time looking for Spanish items and Italian items and all items.

Q When you say all areas what are you referring to?

A The entire New York City.

Q The five boroughs?

A Yes.

Q How did you acquire that understanding?

A It was, I guess, basically -- I was told it. I never really questioned it, to tell the truth.

Q Do you specifically recall the conversation in which you were told it?

A No.

Q Isn't it true that you were -- that you became aware at some time during your association with Galaxy that Galaxy was incapable of making deliveries throughout the New York area?

A Am I aware of it?

Q Isn't it a fact that you became aware that Galaxy was unable, physically unable to make deliveries throughout the New York area?

A No.

Q Your answer to that is no?

A Yes.

Q Tell me, Mr. Kirsch, whether you recall the following question being asked and you giving the following answer --

THE COURT: Is that a reference to that prior exhibit?

MR. LERNER: This is a reference to Plaintiff's Exhibit No. 2, your Honor.

Q "Question: Now, during the spring and summer of 1972, what were the new guests informed as to the operating area that Galaxy would begin operation, how large an area were they told they would deliver all over?

"Answer: No. We basically were unable to deliver all over. The warehouse wasn't capable of it. We basically was limiting them to Brooklyn-Canarsie area." Do you recall that question being asked and do you recall the answer given?

A Now that you read it, yes.

Q Would you like to change the statement you previously made to the question I asked a moment ago, as to whether or not Galaxy was capable of delivering food items

throughout the New York area while you were associated with the company?

A Wel-, in the latter part of the year, before we opened the retail operation and we acquired the warehouse, I was informed that we were going to be retailing and I was to start acquiring the necessary products for the catalog, which I did, and as I was told later on that we would not service the entire area, but your question was did I know if it was told to the people --

Q No, my question to you, Mr. Kirsch: While you were associated with Galaxy did you become aware of the fact that Galaxy was incapable of making deliveries throughout the New York area? That was the question, and your previous answer was no, that you were not aware of it.

Do you wish to change that answer now?

A I guess I was aware of it, yes.

Q Why were they incapable, Mr. Kirsch?

A Based on that testimony, as I gave before, which I guess -- what I told you there, not to my recollection but it was told to me that we would only service the Canarsie area.

The warehouse was incapable and we didn't have that many trucks.

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Q Do you know whether any speakers at the Opportunity meetings or speakers at the Sunday Step-Up meetings informed potential investors and existing investors that Galaxy was incapable of delivering food items, throughout the New York area, at the time you learned about it?

A Again, I was not at these Opportunity meetings.

Q I just asked you, do you know whether or not they did?

A No.

Q Did you ever request any of the speakers at the Sunday Step-Up meetings or at the Opportunity meetings to make such an announcement?

A No. It was not my function to tell them what to say.

Q Did you ever hear any speakers -- by the way, did you attend meetings during the spring and summer of 1972?

A No.

Q You didn't?

A No. I was too busy researching the retail end of the business, setting up the catalogue.

Q I see. Then you would not have heard -- well, strike that.

Did you ever hear speakers tell potential investors, let's say prior to this summer, when you were

attending these meetings, that Galaxy would only be able to deliver within a three-mile radius of the warehouse?

A As I recollect now, yes, that was mentioned.

Q When was it mentioned?

A I don't remember exactly.

Q But it couldn't have been during the spring and summer of 1972?

MR. GOIDEL: Your Honor, I will object to that question.

The witness never mentioned anything about the spring and summer of 1972. Mr. Lerner asked the question, whether he heard something said at a meeting at that time.

MR. LERNER: I'll rephrase the question.

MR. GOIDEL: Thank you.

Q Let me rephrase the question. You've just testified, I believe, that you did not attend any Sunday Step-Up or Opportunity meetings during the spring and summer of 1972; is that correct?

A Yes.

Q Therefore -- and correct me if I am wrong -- you could not have heard at an Opportunity or Sunday Step-Up meeting during the spring and summer of 1972 that Galaxy was limiting its delivery to a three-mile radius? Would that be

a fair statement?

A Yes.

Q Let me again refer you to your prior transcript, the question that was asked to you and the answer given. Please tell the Court whether or not you recall those statements made, all right?

"Question: Did you ever hear, Mr. Kirsch, at any Opportunity meeting or Sunday Step-Up meeting you attended the speakers telling the new guests that Galaxy would only deliver in a three-mile radius from the warehouse? That is, in the spring and summer of 1972, did you ever hear that from any speaker?"

Your answer:

"Answer: I would have to say yes."

A I guess at that point I was in error because I did not, as I recollect, I was not physically capable of going to any Opportunity meetings during the spring and summer of '72.

Q Why weren't you physically capable of it?

A Mainly because I was spending a lot of time in the warehouse, researching the catalogues. I spent basically anywhere from eight to seventeen, twenty hours in the warehouse. In fact, sometimes I was there until five, six in the morning.

So I guess I was in error at that point.

Q In other words, the statement you made here in the transcript is inaccurate?

A I would have to say yes.

Q Mr. Kirsch, how many pilot programs do you recall being run by Galaxy?

A Well, there was one very long time ago that we just went to a local supermarket and we had one that people go out and acquire a couple of customers, just to make sure that we could deliver it and we made up a mock catalogue of what that supermarket had and we delivered products to them.

We went down to the supermarket and bought the items and delivered it to them. We didn't make any money on the deal.

Q Do you recall when that took place?

A I would have to say, beginning of '72.

MR. LERNER: May I have a moment, your Honor?

THE COURT: Surely.

Q Mr. Kirsch, where are you presently employed?

A Futuristic Foods, Incorporated.

Q What is your position there?

MR. GOIDEL: Objection.

MR. LERNER: On what grounds?

MR. GOIDEL: Immaterial to this litigation.

THE COURT: Well, I will overrule the objection, subject to connection.

MR. GOIDEL: Thank you.

MR. LERNER: Your Honor, I'd like --

THE COURT: You do not have to argue it. I am allowing you to go forward.

MR. LERNER: Okay.

THE COURT: You asked for his position there. What was the answer to that?

THE WITNESS: I am Vice President in charge of Administration.

BY MR. LERNER:

Q What do your duties entail?

MR. GOIDEL: Objection.

THE COURT: I will give you a continuing objection.

MR. GOIDEL: Thank you, Judge.

THE COURT: Subject to connection.

MR. LERNER: Your Honor, possibly we could save some time if I might make an offer?

THE COURT: Well, I believe that it would bear on a possible question of relief, wouldn't it?

MR. LERNER: That's correct, your Honor.

BY MR. LERNER:

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Q What are your duties there?

A The organization and the implementation of the retail, which is the acquisition of the customers, the delivering of food to them and the purchasing of the products.

Q What does Futuristic do?

A Delivery service, free home delivery service, all supermarket items in the local New York City area.

Q When was Futuristic organized?

A I have no idea.

Q When did you first become associated with the company?

A February of '73.

Q Were you at any time associated prior to February, '73?

A No.

Q In any fashion?

A No.

Q Do you know Mr. Arthur Shevack?

A Yes.

Q Is he associated with Futuristic?

MR. GOIDEL: Your Honor, I will object again. This certainly has nothing to do with the question of potential damages or anything of that sort, whether he knows Mr. Shevack and things of that nature.

MR. LERNER: We are not requesting damages here, your Honor. We are seeking injunctive relief and it goes directly to the question.

MR. GOIDEL: Not for relief, who he knows outside of this litigation.

THE COURT: Well, I am not so sure about that, Mr. Goidel. At least it seems to me that the Court should hear it, at least on the basis of some connection, some possible connection may be demonstrated, as to its relevance.

If I am not mistaken, Shevack is one of those who consented to an injunction; isn't that so?

MR. LERNER: No, your Honor. He is Mr. Goidel's other client.

THE COURT: Is he your other client?

MR. GOIDEL: That's right.

THE COURT: Sorry.

Well, nevertheless, I am going to overrule your objection on the basis I indicated. I will give you a continuing objection.

BY MR. LERNER:

Q Who is Arthur Shevack?

A He's one of the owners of the company, Futuristic Foods.

Q What is his position there?

A He's an owner.

Q Is he also the same Arthur Shevack who is a defendant in this present action?

A Yes.

Q Now, Mr. Kirsch, does Futuristic Foods have a -- sell franchises?

A Yes.

Q How are they sold?

A Through various methods; people looking for an opportunity, people looking for a business, people knowing people, people buying businesses.

Q What kind of franchises are sold?

A What kind of franchises?

Q Yes. Is there more than one kind?

A Yes. There are two.

Q Would you please describe them?

A One is a -- what is now a $3,000 investment and one is a $6,000 investment.

Q How could -- when you first became associated with Futuristic, how could people make money in Futuristic Food?

A Through the sale of franchises.

Q Could they make money on the retail end?

A No. There was no retail end at that time. It

was all building up to the retail end.

Q Could you please elaborate how they could make money on the sale of franchises?

A At that time they -- if they knew of somebody who was looking for a business, they would earn money on the commission brought in by that investment.

Q They could recruit people?

A I don't know if they could recruit people, but if they knew somebody looking for a business, they could earn commissions.

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Q Isn't it a fact that Futuristic held meetings?

MR. GOIDEL: Your Honor, I'm going to object.

There is no litigation in this proceeding involving Futuristic, nor is there any evidence to demonstrate that Mr. Kirsch can speak for Futuristic Foods, Inc., as relates to its franchise operation.

He has already described his activities with Futuristic Foods, and your Honor once said, at the very beginning of this litigation, if they wish to amend their pleadings, to bring in Futuristic Foods, Inc., claiming that it has done something improper, they may do so.

As it is, your Honor, for your edification, they did commence a proceeding in the United States District Court for the Southern District of New York and that matter is pending.

Now, I don't know how much further Mr. Lerner wishes to go.

MR. LERNER: I wish to only go so far as to show that Futuristic and Galaxy are, for all intents and purposes, structured identical to one another.

MR. GOIDEL: Your Honor --

MR. LERNER: They constitute -- let me finish.

MR. GOIDEL: I'm sorry, Mr. Lerner.

MR. LERNER: They constitute similar methods of recruitment, similar methods of operation and, as we've alleged, they constitute the sale of a security.

We are not introducing the evidence or we're -- I'm not eliciting evidence from Mr. Kirsch to prove any of the substantive charges we've alleged in the present action, your Honor.

It only comes in as to the -- to show the propensity to violate the law and as to the need for an injunction.

If we can't show a violation here, then this testimony can be thrown out.

Once we show a violation here I think it's incumbent upon the Court to take into consideration the present acts and the activities of the defendant.

MR. GOIDEL: Your Honor, if I may be heard for a moment?

Futuristic Foods is not a party to this proceeding.

Mr. Kirsch, if he is enjoined, would be enjoined, I assume, from selling securities.

The question once again would arise as to whether or not what Futuristic Foods is doing is in fact contrary to what Mr. Lerner seems to think is a fait

accompli, whether in fact it is.

Now, Mr. Kirsch can speak for Mr. Kirsch. He is the party defendant here. I have no objection to them asking him any specific questions about what he does.

But certainly he is not here speaking for Futuristic Foods or any other firm.

MR. LERNER: I don't hear anybody here denying, your Honor, that Mr. Kirsch is not part of the management of Futuristic. A corporation must speak to its officers and directors.

MR. GOIDEL: An officer can only speak to the extent that a corporation imposes or confers upon him the authority to speak.

A treasurer cannot perform the duties of a president and the president cannot perform the duties of a secretary.

THE COURT: Well, I think there are some distinctions that have to be made. The Futuristic operation obviously is not on trial here.

So far as this trial is concerned, it is directed at this witness in an individual capacity. Is it not?

MR. LERNER: That's correct, your Honor.

THE COURT: And while I recognize that you have to lay the basis for believing him to have been a part

of what the Commission alleges was an illegal sale of securities and also to demonstrate a need for equitable relief in that regard, it does seem to me that if the ultimate aim of any injunctive relief is to prohibit him, restrain and prohibit him from engaging in the sale of securities hereafter, that we have to find out what he does, and I am willing to permit you to go that far with this witness, what he does, what his role, what he is actually doing now.

Now, there would be a real question, I suppose, as to whether an injunction could go so far as to prohibit him from accepting employment with an organization, assuming that that organization might, through others, do things which also ran afoul of the Securities laws.

MR. LERNER: Your Honor --

THE COURT: I am not prepared to jump, make that jump yet.

MR. LERNER: Your Honor, I think it certainly is critical for the Court to know whether this man joined the company at a time when he knew the company was engaged in the sale of the so-called franchises and became an integral part of that company.

Whether or not he directly sold the franchises

or not I don't think is relevant.

If he was indirectly responsible for the company continuing an existence and he certainly was at least aiding or abetting or acting in concert, as our papers allege in this action.

MR. GOIDEL: Your Honor, if I --

MR. LERNER: We don't have to show the direct sale of security by an individual, certainly.

MR. GOIDEL: If I may again be heard, your Honor?

The matter involving Futuristic Foods is before Judge Connors in the United States District Court for the Southern District of New York. Futuristic Foods certainly, as of this moment, and Judge Connors can advise your Honor and I believe you can take cognizance of any proceedings that have been before that Court. Futuristic Foods does not sell franchises which in turn allow an individual to obtain a customer and get a commission. In other words, a resale under a franchise.

Judge Connors specifically refused an injunction which was requested preliminarily by the Securities & Exchange Commission that would have gone to that extent.

And certainly, since September 1st of this year, the State of New York has enacted a Blue Sky Law, and Futuristic Foods is in compliance with that Blue Sky Law, as far as I understand it.

So certainly the purpose for Mr. Lerner -- Mr. Lerner, by the way, has been before Judge Connors on this very matter. So the purpose behind this type of questioning, in my opinion, your Honor, is merely for the purpose of inflaming the passions of individuals here and, thank God, recognizing that you as a Judge are not 12 gentlemen or ladies who are susceptible to passion on a jury, perhaps, and would not quite understand the import of what's being said or what's being done here.

But there is no purpose behind Mr. Lerner's questions other than to innuendo to make it appear that Galaxy and Futuristic are similar, which they are not, or that what Mr. Kirsch may have done for Galaxy is the same as what he does for Futuristic, which is not altogether so, or that Mr. Kirsch sells franchises, which, as I understand, he does not do for Futuristic. And things of that nature.

Now, he can ask Mr. Kirsch what Mr. Kirsch does, and Mr. Kirsch, I assume, your Honor, would want him

to answer those questions, but he is not here speaking for Futuristic. Futuristic is not on trial here.

And, your Honor, frankly I don't think we should allow these two separate matters to become entwined.

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MR. LERNER: Your Honor, I agree Futuristic is not on trial here but once again, it is -- it certainly is critical. If we can prove the violations in this case, then subsequent conduct by the defendant is absolutely relevant --

MR. GOIDEL: One -- I'm sorry.

MR. LERNER: Mr. Goidel, please.

MR. GOIDEL: I'm sorry, Mr. Lerner.

MR. LERNER: -- to your decision as to whether to issue an injunction.

MR. GOIDEL: Your Honor --

MR. LERNER: The propensity to violate is the standard, your Honor, in the Second Circuit. And if we can show that Mr. Kirsch is continuing to act in a manner which is similar to that alleged in our complaint, then I think the burden becomes even stronger to issue an injunction.

THE COURT: Let me ask you this, Mr. Lerner. Isn't it pretty universally true that such injunctions as are granted in matters of this kind are nearly always based on past conduct?

MR. LERNER: No, your Honor, that is not necessarily true.

THE COURT: Or -- let me put it this way.

MR. LERNER: Certainly is more relevant if

there is future conduct than past conduct.

THE COURT: No. By past, I think what I meant was conduct which had been going on up to the time the injunction is sought.

MR. LERNER: The Court takes into consideration, your Honor, the question of whether the defendants had ceased that conduct and what they were presently doing. They had ceased that conduct if they had made restitution or taken any other affirmative action --

THE COURT: But there are many --

MR. LERNER: The Court --

THE COURT: There are many cases which hold that ceasing conduct is not necessarily --

MR. LERNER: But in SEC vs. Bangor Punta case, your Honor, the Commission wasn't able to get an injunction even though -- I believe it was Judge Mansfield found that there were violations by the defendants in that case.

The same thing happened in the SEC v. Marwyn Industries. Judge Mansfield, I believe, again in that case found there were violations -- found violations of the Federal securities laws but they've also found that defendants had ceased their conduct. They had taken affirmative conduct -- action to

register their securities and would not grant us an injunction.

THE COURT: Well, that of course, I suppose, related to activities of a fairly well known corporation, was it not?

MR. LERNER: Harwyn Securities was not.

THE COURT: I don't know about Harwyn. I was thinking of the Bangor Punta. Did Harwyn also register?

MR. LERNER: Harwyn subsequently registered.

THE COURT: To that extent, they were brought into compliance with the law, as an entity. After all, I think that there is something to be said for Mr. Goidel's argument here in this respect, and also for yourself.

It is difficult to draw the line. Obviously the Futuristic case is not on trial here and is pending before another district court. I would be hesitant to attempt to appear even to be trying that case under the guise of trying this one.

Now, it does occur to me, and I agree with you, that the Court here in this case would have to be convinced that there was a propensity to violate the law which called for injunctive relief. I would be reluctant, however, to perhaps consider taking employment

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with another entity as such propensity if it were not demonstrable that there were -- was activity on this particular individual's part which -- from which the Court could conclude that he was knowingly and -- if one wants to put it that way, willfully engaging in a sale of securities.

This is what is troubling me. Obviously there are some people connected with this organization who perhaps planned it and did engage in what at least arguably and which other Courts have certainly held amounted to a sale of securities in similar situations.

I'm not pre-judging the case. I am simply, from a standpoint of trying to make clear my own problem here at the moment. And it is probably so that some of their employees may well have played auxilliary roles in the sense of carrying on some corporate activities which were not directly the sale of securities.

I find it perhaps difficult to say that from a critical standpoint one can be, of course, an aider and abettor. I don't know whether that doctrine has crept into civil injunctive law.

MR. LERNER: Your Honor, cases are legend in the area that aiding and abetting -- as a matter of fact, we allege, I believe, in our complaint here

we've alleged in our complaint in Futuristic, aiding and abetting is an integral part of injunctive law and we have obtained injunctions on it.

I will be glad to brief the matter for your Honor, if you wish. Not only that but the standards are not knowingly and willfully. The standards can be a matter of mere connection for the Commission getting an injunction.

The SEC vs. Spectrum, for an example, an attorney in that case acted negligently and was enjoined by the Commission; went up to the Second Circuit and was affirmed -- reversed in the Commission's favor.

MR. GOIDEL: Your Honor, I still feel at this moment we are getting a little far afield. We are concerned here with what Mr. Kirsch did in connection with Galaxy Foods and perhaps later on we will be concerned with what he's doing for Futuristic.

THE COURT: But the basic concern is, of course, whether what he did with Galaxy would fall within the concept of aiding and abetting, and I am accepting counsel's representation that that seems to be fairly well documented in the cases, and I am not prepared to say that --

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MR. LERNER: Your Honor, I'm willing to concede that this testimony would fall, would be completely stricken from the record and shouldn't even be read in your Honor's determination as to whether a violation took place.

It should only be considered after the fact, after that determination is made.

MR. GOIDEL: Your Honor --

MR. LERNER: We're not trhing Futuristic here. We have no interest in that. We're not requesting that the testimony be admitted for that purpose.

MR. GOIDEL: Your Honor, certain charges have been made in the plaintiff's complaint, in this proceeding. Those deeds or acts transpired in the past. Whether or not they should be imputed to Mr. Kirsch is what's at issue here.

If he committed those acts, then perhaps injunctions should be issued. Certainly if he still is committing those acts, perhaps it should be issued, but first they must demonstrate what he is alleged to have done to have in fact taken place and to have in fact been performed or committed by him.

Now, to now jump into what he is -- obviously, if your Honor issues an injunction it then falls upon Mr. Kirsch in his judgment to determine whether any

future act performed by him is in violation of your Honor's order.

It's not for Mr. Lerner to make that determination for Mr. Kirsch. If Mr. Kirsch fails to make a correct judgment after that, Mr. Lerner can proceed to this Court and ask that he be held in contempt of this Court's order, if such an order were issued.

So I don't think that we have to concern ourselves right now with whether Mr. Kirsch is doing something that your Honor may in the future enjoin him from doing because it may be found that he did it in the past.

THE COURT: Except, I believe, there is a doctrine in equity that equity speaks not as of the beginning of the lawsuit but as of the state of facts which exist at the time.

MR. GOIDEL: Right.

THE COURT: Now, the time period here, as far as his further activities are concerned, date back to early 1973.

MR. GOIDEL: I have no objection to -- as again I say, Mr. LErner asking him what he's doing but I don't want questions asked about Futuristic Foods.

THE COURT: In fact, I take it that this case was actually -- he was actually with the other.

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MR. GOIDEL: He was already with the firm, sir.

THE COURT: Already with Futuristic when this suit was started?

MR. GOIDEL: That is right, sir.

THE COURT: So I think there might be an argument that supports the idea that his present activities are relevant to the question of propensity and need for injunctive relief.

MR. GOIDEL: His present activities, I have no objection, again I will repeat. Mr. Lerner can ask about his activities.

THE COURT: I see. Well, perhaps we've been arguing about something --

MR. GOIDEL: I don't want him to be asked questions other than in his individual capacity.

He's not here speaking for any corporation known as Futuristic Foods or any other firm. He may be asked what he does, what he contemplates doing even. But not as to what Futuristic does.

MR. LERNER: I think,your Honor, his awareness of facts when he joined Futuristic -

THE COURT: Well, I was going to say -- I was going to say that. For instance, I would think it would be relevant here to inquire into how he came to get this employment. That is to say, with whom

4 he spoke.

MR. GOIDEL: Fine.

THE COURT: What was told to him and so forth. And I would certainly permit you to inquire into that. Particularly, since the person he is associated with is a co-defendant in this case on trial.

MR. GOIDEL: Your Honor, again, Mr. Shevack is a defendant.

THE COURT: I'm trying to treat each defendant on his own.

MR. GOIDEL: Your Honor, I dare say that the reason why --

THE COURT: I can't be blind to the fact that this was a corporate enterprise.

MR. GOIDEL: Your Honor, I dare say that the purpose behind Mr. Kirsch and Mr. Shevack being defendants in this proceeding is not by virture of anything other than the fact that they are engaged as employees of Futuristic Foods.

Had they not been, I have no doubt in my own mind that they would never have been named in this litigation.

THE COURT: That's speculative.

MR. GOIDEL: Perhaps so.

THE COURT: That's hardly a consideration this Court can take into account, what might have been

the case of --

MR. GOIDEL: Your Honor, for your Honor to go-- to go into this entire issue, automatically will necessitate --

THE COURT: I am not going into an entire issue other than how this defendant and witness here came to associate himself with Futuristic.

MR. GOIDEL: Futuristic Woods, for example, Your Honor.

THE COURT: And what was he told about its operations and what he himself does in connection with those operations.

MR. GOIDE: Your Honor, I must respectfully except of course.

THE COURT: That seems to me to be -- to fit perfectly your own acknowledgement that it's what he knows and what he does that matters.

That's all I am interested in.

MR. GOIDEL: Correct. But you see, your Honor, if Mr. Kirsch -- and I don't know what he would answer to these questions, I don't know if he performs the exact same service, the same work. But if Mr. Kirsch theoretically were to say yes, I set up a catalog for Futuristic, all right.

Now, since a catalog was set up for Galaxy

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6 and since they apparently did not deliver what was in the catalog, then, of course, the inference may be drawn, not that it should, that because he did the same work there, that Futuristic is performing in the same way that Galaxy is performing and that --

THE COURT: Yes. But here is what you are overlooking. The question is: Shall he be enjoined in this lawsuit from conduct which is violative of the Securities laws.

MR. GOIDEL: Yes.

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THE COURT: And that in part depends upon a showing of propensity to commit a violation. It is not an adjudication that he is in fact committing a present or future violation, that remains to be seen.

You may win the if you are involved in New York -- I don't know whether you are or not --

MR. GOIDEL: We certainly are, your Honor.

THE COURT: You may win the case there, in which case, if an injunction is issued in this case, it means he hasn't violated the injunction, but it -- it may seem like a distinction without a difference, but it is quite clear to me.

MR. GOIDEL: Let us make this assumption, your Honor, if I may, and then I will sit down and not be heard any further on this issue.

If your Honor were to have issued an injunction in this proceeding, and if there is an action pending in the Southern District before Judge Connors, and if that case hadn't yet been tried and if in the interim Mr. Lerner or Mr. Garmansky, or another representative of the Securities and Exchange Commission, before the trial of that action, came back into this Court claiming that there was a violation because of activities committed in Futuristic Foods, would

your honor undertake to decide that issue before the trial of the Futuristic case?

THE COURT: I'm not going to give you any assurance commitments. I'm only going to tell you that as a reasonable Judge, I would be very likely inclined to abide by the outcome of that case in the Southern District, but that's not a commitment.

MR. GOLDEL: I understand it is not a commitment. But I raised it only to show how inextricably --

THE COURT: I just pointed out to you the fact that he could end up with an injunction -- I'm not saying that he will -- but for the sake of argument here, if he should end up with an injunction on the basis of the Galaxy case, and on the basis of a showing of propensity, that is not an adjudication, that is not an adjudication that Futuristic is the same as Galaxy or enjoinable or anything else; it may not, I don't know. I have no way of knowing. That is not before me.

If perchance you lose the case in New York, then the chances are good that he may be held to have violated the injunction, if one should be issued here.

If you win the case in New York, then that question won't come up.

MR. GOIDEL: Your Honor, do I understand, though, that the questioning will not at least be limtied to Mr. Kirsch, what he did and his activities?

THE COURT: What he knew --

MR. GOIDEL: what he knew.

THE COURT: -- and what he has done. It may involve some slight understanding of what is being-- the context in which it is being done, because we can't operate in a vacuum here, but I certainly do not intend to conduct a pre-trial in this case of the Futuristic case in the Southern District, you can be sure of that.

MR. GOIDEL: Thank you.

THE COURT: I would like to suggest, Mr. Lerner, that you explore with this witness a little bit how he came to be with Futuristic, who did he talk to, what was said about it to him.

BY MR. LERNER:

Q Mr. Kirsch, when did you first hear of Futuristic Foods?

A February of '73.

Q How did it come to your attention?

A Well, I had left Galaxy Foods back in January and at that point I was contemplating opening up my own

business, which was a bar, and --

THE COURT: Which was what?

THE WITNESS: A bar. I was riding around my neighborhood, which is Rego Park in Queens, and I happened to see this co-defendant Arthur Shevack on Woodhaven Boulevard in front of this office and I stopped, and we started talking about why I left Galaxy Foods, and he asked me the question why I did leave, and he knew I spent a lot of time in the retail development of Galaxy Foods, the acquisition of the catalogue and everything else.

Q How did he know that?

A Because I was always involved in it. If anybody had a question about the retailing, they would come to my office and I would explain to them what I had done and show them the part of the catalogue I had developed.

Q Were you, by the same token, aware of what Mr. Shevack did at Galaxy?

A No.

Q You weren't?

A No.

Q Go on.

A We then sat down -- at that time we sat down in this little office that he had and he explained to me

that he liked the whole concept of Galaxy, which was delivering the food to the customers, that he was a little bit dissatisfied that Galaxy's management wasn't operating quite the way he would like to have seen it operate, and therefore he was doing his own company with Mr. Cancilla, and that he told me that because I had spent a lot of time, which I had told him -- I was a little upset because I liked the retail operation, I spent a lot of time in it, and I would like to see the company work, but I couldn't go along with some of management's decisions. And we started talking about it and he offered me a position with Futuristic Foods at that time.

Q Did you ask him what Futuristic was all about?

A He had told me they were basically a free home delivery service. They wanted to make the service, which had veen explored by other -- several other companies, not only Galaxy, but the retail operation had been explored by several other companies in other parts of the state, and he had done his research basically and he liked the idea of the delivery, and he asked me to help him organize the retail portion of the business, since I had done a lot of research into it.

Q Did they tell you whether they were presently involved in retail?

A No, at that time I was made aware that, again,

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they didn't have the necessary capital to put together the retail operation, that they were funding it through investors and that they wanted me to work with them to help develop the retail, which is exactly what I did here.

Q Did you inquire how they were funding it through investors?

A Yes, they again formed me that they were working through the sale of franchises.

Q In a manner similar to that of Galaxy?

A In a manner similar to Galaxy investment program, yes.

Q The recruitment program?

A That being a franchise where people could invest one or $2,000.

Q Did they say they utilized similar to opportunity meetings?

A The meetings held were very business-like, low key, there was no excitement or clapping, like that.

It was just a regular business-type meeting, and we explained the retail program, how it was going to work and how it could work, and also the percentages were more in line, more realistic.

Q Did they also have something similar to the Sunday step-up meetings that they had at Galaxy?

A Again, we had these meetings during the week just to feel out who was really interested in the franchising, and on Sunday they would come back and take all these people that were interested and they would com back to discuss the future possibilities of their investing.

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DIRECT EXAMINATION

BY MR. LERNER: (Cont.)

Q And these meetings were held to bring these people into the company, help them invest in Futuristic; is that correct?

A They were held to determine whether a person did want to invest and whether he was capable of operating the business successfully.

Q Was there questions concerning the sophistication of these people?

A Many people were asked their qualifications, why they wanted to invest in the business.

Q Did you attend these meetings, by the way?

A Yes.

Q So they had a meeting similar to the Galaxy Opportunity Meeting and a meeting similar to the Galaxy Sunday Step-up Meetings; is that correct?

MR. GOIDEL: I object.

Similar calls for the operation of his mind.

MR. LERNER: I think he's in a position to draw that conclusion, your Honor.

MR. GOIDEL: We are not interested in his conclusion.

MR. LERNER: Then I will go into the methodology

of each meeting and let the Court make its determination.

THE COURT: I will sustain the objection as to the form of the question. He has said he attended the meetings.

Why don't we find out factually what did occur at the meetings he attended, even if it takes time, it's worth it.

We are spending time on this case, let's get down to the nitty-gritty.

BY MR. LERNER:

Q Mr. Kirsch, -- by the way, what was your title at Futuristic?

A My title currently?

Q When you first joined?

A I didn't have a title.

Q When did you first have a title?

A Not until sometime later on.

Q Were you a distributor -- what were the two levels called there, by the way?

A At that time it was a 1000 and a $3000 investment.

Q Wasn't something called the Gold and the Silver?

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MR. GOIDEL: Objection, your Honor. He's already asked his question and it was described.

MR. LERNER: Mr. Kirsch has stated that they had low-key type meetings, low-key atmosphere as opposed to Galaxy, and I think there are certain things that we can bring out to show that that was not the case, your Honor.

THE COURT: I will overrule the objection. It will be on the basis that I discussed with counsel in colloquy, that this has a bearing solely upon the question of relief should the Court conclude that an injunction should be granted on the basis of the Galaxy situation.

BY MR. LERNER:

Q What were the franchises called?

THE COURT: Was there an answer to that question? You said something about the --

MR. LERNER: I will rephrase it.

Q Weren't they called Gold and Silver?

A The term Gold and Silver was used only as an example. The actual franchise was an investment of one or $3000.

Q What was the $3000 one called?

MR. GOIDEL: If I may interrupt for one moment,

because we are going into this issue, I would want some papers and documents brought from my office.

May we have a two-minute adjournment so that I may call my office and ask them to bring down various documents which I would want to use probably on cross-examination.

THE COURT: Certainly, you may have that opportunity. Let's take a ten-minute break.

(Recess.)

(Witness Kirschenblatt resumes the stand.)

DIRECT EXAMINATION

BY MR. LERNER: (Cont.)

Q Did it have a name other than the $3000?

A The official title was $3000, but for an example they used the term Gold.

Q For the thousand dollar franchise?

A Again, for an example it was used as Silver, just for the purpose of giving it a name. Any name could have been given, from what I understand.

Q Now, did the Opportunity Meetings have a name, were they called Opportunity Meetings at Futuristic?

A No. At that time -- it's not Opportunity Meetings, it's called a preview of the business.

Q A preview meeting?

A A preview of the business.

Q Who would speak at those meetings?

A Arthur Shevack.

Q Anybody else?

A THe other officer, Peter Cancilla.

THE COURT: What was that name?

THE WITNESS: The other officer of the corporation, Peter Cancilla.

THE COURT: How do you spell that?

THE WITNESS: C-a-n-c-i-l-l-a.

Q Weren't there in fact four speakers at each of the preview meetings?

A I used to do the retail portion of the speaking. I used to go up and explain what the retail --

Q So you also spoke at meetings?

A Yes, at the very beginning I did, yes.

Q Anybody else speak at the meetings?

A No, basically I believe it was only three people that did the speaking.

Q Where were the meetings held?

A In the office.

Q Were they always held in the office?

A Up until recently, yes.

Q How recently?

A We outgrew the office about a couple of months ago, probably September 1st, the company, from what I understand, started going to hotels.

Q Weren't they in the Holiday Inn for some time?

A It was, yes.

Q And approximately how many people attended these meetings?

A I have no idea.

Q Could you estimate?

A I have no idea.

Q Would you say there was more than a hundred?

MR. GOIDEL: Objection, your Honor, unless time is fixed.

BY MR. LERNER:

Q When did the meetings initiate?

THE COURT: When you say up until recently, what period of time are we talking about?

THE WITNESS: There was a law passed Sept. 1st, and we have been complying with the law since September 1st.

THE COURT: Do you mean that at the time this law was passed you then switched your meetings from an office to a hotel or motel, whatever the case may be? Is that what you are telling me?

THE WITNESS: We outgrew our office.

THE COURT: WKen was that?

You said until recently. What time period are we talking about?

THE WITNESS: That we used the office?

THE COURT: Yes.

THE WITNESS: I would say for several months.

THE COURT: You started in February of 1973. By "several months", what do you mean, the summer of 1973 or beyond?

THE WITNESS: I would say the summer of '73, yes.

THE COURT: And then you went to --

THE WITNESS: Then we had no more facilities to explain the business opportunity to people, so the company rented rooms.

THE COURT: When you say you had no more facilities, do you mean you didn't have an office anymore?

THE WITNESS: No, we couldn't seat everybody in the office.

THE COURT: You couldn't seat everybody in the office. Where was the office located?

THE WITNESS: On Woodhaven Boulevard.

8 a Kirschenblatt - direct

THE COURT: I see.

THE WITNESS: Since that time we acquired another office on the same block, and we do hold our discussions with our potential investors at this other office.

From what I understand.

THE COURT: You don't attend these meetings?

THE WITNESS: No,sir.

(continued next page.)

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BY MR. LERNER:

Q Did I understand you correctly, you said that you do not attend any of these business preview meetings?

A I do not attend any more, no.

Q When did you cease attending them?

A Many months ago when the retail operation started, when we started acquiring customers. At that point I was again putting together the catalog and buying products.

The company had bought a building and I was into the operations of making the retail, which is acquiring customers, successful.

Q You had attended meetings up until that time and spoke at meetings?

A I spoke at a few, not very many. I am not what you call a very good speaker.

Q Do you know how many gold or silver franchises were sold at the time you ceased attending these meetings?

A No.

Q Were any sold?

A NO.

Q Are you a franchise holder, by the way?

A My wife is, yes.

Q Your wife is. What does she have, a thousand or a three thousand?

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A She has the three thousand dollars.

Q Has she made any money from it?

A No, except from the sale of food to consumers. which we are paid percentages.

Q At these preview meetings, do you recall a man by the name of Dennis Shevack speaking?

A Not at the very beginning, no.

Q Do you recall him speaking at any of the preview meetings?

A No.

Q You do not?

A I don't attend them any more.

Q Do you ever recall seeing him or hearing him speak?

A No.

Q Do you know whether he ever spoke?

A He might have. I don't know.

Q You don't know?

A I don't attend the meetings.

Q Did Futuristic hold training sessions?

A Yes.

Q In fact, weren't franchise holders required to go to the training sessions?

A Yes.

Q Did you ever speak at training sessions?

A Yes.

Q What was your presentation?

A Again, I covered the retail aspect of the business which was how to acquire a customer. I showed them what the catalog was going to look like and is looking like now. I explained to them what the retail portion of the business can do for them, the kind of products we would be carrying.

I explained to them the layout of the routes as I had projected it, not just myself but the owners of the company had projected the layout of the routes and what the entire operation can be.

Q Did you ever sit through a full training session?

A No.

Q Never did?

A No.

Q Do you know whether prospecting was taught at these training sessions?

A I have no idea.

Q You have heard the phrase, and you have testified to it previously, GTC, get the check.

A Yes.

Q Was that taught at Futuristic?

A I have no idea.

Q In other words, just as you had done at Galaxy, you came in, you made your presentation and you left?

A Yes.

Q At how many training sessions did you speak at?

A I don't know any more of the training -- I would say several.

Q Several?

A Yes.

Q More than ten?

A Again, I can't fix a number to it. I never keep records.

THE COURT: Were they held on a regular basis?

THE WITNESS: Again, pretty much so, on a monthly basis.

THE COURT: About a monthly basis?

THE WITNESS: Yes. In fact, we have a clause, if I can explain, we have a clause in our brochure that the franchise owners must attend the training within 75 days.

We want the people to be educated about the retail operation. We want them to know how to acquire customers and what the retailing can do.

Q Was that the only purpose of the training sessions, to acquaint them with the retail?

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A As far as I know, yes.

Q As far as you were concerned, did the session end as soon as you finished speaking?

A We explained --

Q Did it end as soon as you got finished speaking?

A No.

Q Do you know what was said?

A I do know that we explained the structure of the company and how it compared -- what I used to do is say how it compared to the other company that had done the retail operation.

Q Was the training session in progress when you made your presentation, when you came into the training room, whatever it was called?

A No. What would generally happen is they would break for lunch, they would take a lunch break. After they came back from lunch I used to be introduced to do my retail portion.

Q Do you know how long a training session took?

A No.

Q But it was in motion, in progress in the morning hours, is that right?

A Yes.

Q And it was in operation after you left in the

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afternoon hours, is that right?

A Yes.

Q But you don't know about anything else they spoke about, aside from the retail?

A No.

Q You know of no other purpose which the training session had?

A Again, as far as I am aware, just to orientate them to the type of business we had.

Q Did it orientate them to the business, to the best of your recollection, on how to recruit other investors into the business?

A I have no idea.

Q Was there any discussion at the opportunity meetings with respect to how to recruit others, other investors into the business?

A I have no idea. Not when I was attending them.

Q No one spoke about recruitment?

A No.

Q Was there ever any cheering or applauding at the preview meeting?

A Nothing that would be considered cheering or applauding --

Q Was there applauding?

A When a person was introduced and his name was mentioned and he was brought up to the front to do a portion, yes. That's just common courtesy.

Q I see. Was there a blackboard demonstration?

A Yes.

Q And were any figures written on that blackboard?

A Yes.

Q What figures?

A Anywhere from five percent to -- that's the highest, five percent, $125 to -- I don't remember the figures at this point right now.

Q Was there any figure written on the blackboard which represented how much an investor could earn in a year?

A I honestly don't remember.

Q You don't remember. Did you ever perform any blackboard demonstrations?

A Yes. I used to do the --

Q But you don't remember ever writing any monetary figure?

A I used to do what was called the salesmen presentation, which was if a salesman acquires X amount of customers, and if he performed and got these customers to order so much money, that he would earn Xamount of dollars. But that's all based if the salesman works or not.

Q Was it just the salesmen?

A Just the salesmen.

Q How much a salesman could earn?

A Yes.

Q Were the salesmen at meetings?

A No.

Q What was the purpose of showing how much a salesman could earn?

A To show that if a person worked, if they did want to start as a salesman to try to retail operation, to see if this was the kind of business they wanted; if they worked at this level, this would be approximately how much they would earn.

It's all contingent upon if they went out and acquired customers.

Q Do you recall any checks being handed out at the preview meetings?

A No.

Q At the Sunday meetings, do you recall checks being handed out?

A No.

Q You don't recall checks being handed out?

A No. People who did deserve -- at that time if they deserved a commission they would come into the office

and they would receive their commission.

Q The question is, and please answer the question --

MR. GOIDEL: Objection, your Honor. That is argumentative and he has just answered the question.

THE COURT: Yes.

MR. LERNER: Your Honor, I wish you would direct the witness to respond to the question: Were checks handed out at the meeting? I didn't ask him about any place else.

THE COURT: All right. Do you understand the question? Were checks handed out at these meetings you described?

THE WITNESS: At the previews, no.

BY MR. LERNER:

Q At the Sunday meetings was the question, Mr. Kirsch.

A Not that I am aware of.

Q You can be certain with the preview meetings but you are not aware of any at the others?

A At the preview meetings that I attended at the beginning, there were no checks handed out.

Q The Sunday meetings?

A When I was there, there were no checks handed out.

I must explain that when I am there on Sunday, I take the people on tour of our facilities, and I show them the packages we have: the frozen foods, the meats and every thing else. So that at the portion of the Sunday tour that I do there are no checks handed out.

Q What is the purpose of the tour? Strike that.

Is the purpose of the tour, Mr. Kirsch, to convince the people to join the company?

MR. GOIDEL: Objection to the form.

THE COURT: I will sustain the objection. You may ask him if he knows or has been told anything in the way of instruction, in taking people on the tours, what he is to say and what he is to do.

Q Whose idea was it, Mr. Kirsch, to have a tour of the warehouse?

A I believe that was brought down by the owners, the principals.

Q Were you privy to the policy?

A No.

Q How were you told that there was going to be a tour?

A I was told that we now have a plant and I should take the people on tour of it.

Q Were you told why there should be a tour?

A To explain the retail --

Q Were you told why there should be a tour, yes or no?

A Yes.

Q Who told you?

A The principals.

Q The purpose you were told --

THE COURT: When you say, "the principals," do you mean Mr. Shevack and Mr. Concilla?

THE WITNESS: Yes.

Q Was the purpose which you were told in order to convince prospective customers to join the company?

MR. GOIDEL: Objection, your Honor. He may ask the question what was the purpose of the tour, but he cannot ask the question in that form. It's as though he is asking how often do you beat your wife.

MR. LERNER: It is a leading question, your Honor, I agree --

MR. GOIDEL: It is an improperly phrased question.

MR. LERNER: He stated he was given a purpose, and I have asked him if the purpose was such and such. He can answer yes and he can answer no.

MR. GOIDEL: You can ask him what was the purpose.

MR. LERNER: Don't tell me how I can ask the question, Mr. Goidel.

THE COURT: I sustain the objection. Ask him what was the purpose.

Get on with it. There is too much going around in circles here and we are not getting any facts. Ask him what the purpose was, and let's hear what he has to say.

Q What was the purpose, Mr. Kirsch?

A The purpose was to explain the retail portion of the business, the progress we had made to get into retail, which is acquiring customers and delivering food to them, and to further answer their questions, if they wanted to join the business, if they had questions, what those questions were and I was to answer them on the basis of facts and what we had done to acquire the customers and how we were satisfying their needs.

Q Did you ever attend any management meetings which the company had?

A The company holds staff meetings.

Q Staff meetings: Did you attend those staff meetings?

A Yes.

Q How often are they held?

A Basically, once a week.

Q Where?

A At the office.

Q Were they held once a week since the time you joined the company?

A No.

Q When did they initiate?

A Several months later.

Q Approximately when?

A I attended several months later.

Q I'm sorry, I don't follow you.

When did you first attend the staff meetings?

A Several months later.

Q Several months? Can you be more specific?

A I would say I joined in February -- April, May.

Q April or May. You attended the meetings once a week, right?

A Yes.

Q And could you tell us what was discussed at these meetings?

A Yes. It was discussed as to how soon we can get into retail operation, which is acquiring customers, by what methods, what we were going to start with and everything else about the retail operation.

Q Was there a discussion on how money would be raised to get into the retail operation?

A No.

Q No?

A That was understood when I first joined the company back in February, that the acquisition of funds was coming from the sale of franchises.

Q But there was no discussion, I take it then on how to increase the sale of franchises?

A Not that I was aware of, that was told to me.

Q But you were aware that money would come from the sale of franchises?

A Yes.

Q By the way, do you recall how long Futuristic was in existence and operating prior to the time you became associated with the company?

A No.

Q Are you paid by the company?

A I am paid a salary.

Q What was the salary based upon?

A Again, at this point I am paid a salary. I am being paid a salary of roughly $20,000 a year.

Q Was it based upon an override similar to that which you had received at Galaxy?

A No, I am getting a straight salary.

Q Straight salary?

A Yes.

Q Do you get it each week or bi-weekly?

A Bi-weekly.

Q How much do you receive?

A Right now, $500 every two weeks.

Q When you first joined Futuristic, did you earn any money from the company?

A No.

Q Is it a fact that the first time you earned money was when you received a salary?

A Yes.

Q And that's the straight salary you just referred to, is that correct?

A Yes.

Q How long have you known Arthur Shevack?

A I would say a couple of years.

Q Where did you meet him?

A I met him in my own business and I also know he was a distributor in Galaxy Foods.

Q You met him in your own business?

A I was in K Enterprises, yes. He had his own little boutique shop.

Q You incorporated K Enterprises in --

A I never was incorporated.

Q You're right, I'm sorry. You stated that K Enterprises came into existence sometime in the beginning of 1972?

A '71, sir.

Q '71. What did the K stand for?

A It was disbanded, left dormant when I joined Galaxy Foods.

Q By the way, does the K stand for anything?

A My name, Kirsch, Kirschenblatt.

Q But you did not know Mr. Shevack prior to K Enterprises?

A No.

Q Were you ever associated with a company called Koskot Enterprises?

A I was a distributor with them.

Q Did you meet Mr. Kirsch while you were a distributor at Koskot?

THE COURT: Mr. Kirsch?

MR. LERNER: Shevack.

Q References to Shevack will be Arthur Shevack and not Dennis Shevack.

Did you meet Mr. Shevack or had you already known him?

A I met him there.

Q At Koskot?

A At K Enterprises, which was a distributor.

(Continued on next page.)

Q Oh. K Enterprises was the name of your distributorship?

A Four -- I had sales people representing my K Enterprises selling jewelry, cosmetics, clothing and various other sundry items.

Q Those are the products being sold by Koskot?

A And other companies.

THE COURT: Well, let me just be clear for a moment. Are you telling us that K Enterprises was the trade name of your distirbutorship for Koskot? Is that what you are saying?

THE WITNESS: Yes.

THE COURT: And you sold products you obtained through Koskot?

THE WITNESS: Yes.

THE COURT: Did you sell products of anybody else?

THE WITNESS: Yes.

BY MR. LERNER:

Q Were you a franchise holder of Koskot?

A I was a distributor.

Q Was that a form of a franchise?

A Yes.

Q What did you pay for your franchise?

A $5,000.

Q Was it called a distributorship similar to that of Galaxie, the name, that is?

A It was called a distributorship.

Q When did you join Koskot?

MR. GOIDEL: Objection.

When did he purchase a franchise?

MR. LERNER: When did he purchase a franchise, I'll rephrase the question.

A (Continuing.) Beginning of '71.

Q You still own that franchise?

A Koskot is actually into receivership and there is no more, as far as I understand it. There is no more company. It's into receivership.

Q No one ever took your franchise away from you? As far as you are concerned, you still own whatever they gave you?

A Yes. I still have a product in my house also.

Q Now, at Koskot, how could one earn money?

A Well, there was the sale of cosmetics and other sundry items, plus there was also what they used to call enrollment of the distributors.

I was into just the sale of the cosmetics.

Q How could one earn money? I'm sorry. I didn't hear the second part.

A There was a sale of cosmetics and also enrollment of other distributors.

Q Enrollment. How would yo make money by enrolling as a distributor?

A You would receive a commission for every dollar, I guess, you brought in.

Q In other words, if you sponsored another franchisee or a potential franchisee into the company, you would receive a commission on that basis?

A Yes.

Q Did you ever sponsor anyone in?

A Yes.

Q How many people?

A I believe four.

Q Did you receive commissions by sponsoring them in?

A Yes.

Q How much did you receive in total commission?

A I really don't remember. It wasn't too much, though. It was only four people.

Q I see.

Did you know -- I think you've testified you

knew Mr. Shebach, Arthur Shebach, while you were at Koskot; is that correct?

A I met him at -- he had his own little retail boutique and I met him there.

Q Which was a distributorship similar to yours?

A Yes.

Q Was he also a distributor at Koskot?

A Yes, I believe so.

Q Do you know whether Mr. Shebach had ever sponsored anybody into Koskot?

A No.

Q You don't know?

To the best of your knowledge, Mr. Kirsch, were any of the other defendants named in this action former members or owned distributorships in Koskot, aside from yourself and Mr. Shebach?

A Yes, there are one or two.

Q Who are they?

A Bruce Katz.

Q And?

A Basically I think that's about it.

I'm sorry. Ralph Avni I believe had one.

MR. LERNER: I have no further questions.

MR. GOIDEL: Your Honor, shall we continue

now or are we going to adjourne at 1:00 or when? 12:00 to 1:00?

THE COURT: We are going from 12:00 till 1:00, for your information.

MR. GOIDEL: Fine.

CROSS-EXAMINATION

BY MR. GOIDEL:

Q I am a little confused by some of your testimony, Mr. Kirsch. Let's see if we can iliminate some ambiguity.

I believe you testified you started with Galaxie in August; is that correct? August of 1971?

A '71.

Q When did you first startpaying a franchise?

A In Galaxie? August -- October of 71.

Q I believe you said that you sold three franchises but received payment for one; is that correct?

A Yes.

Q And by "payment" you mean cash; is that correct?

A Yes.

Q Did you receive anything for the sale of the other two?

A I received my franchise, my distributorship.

Q So that between August and October, you sold

these franchises and received your own franchise as compensation; is that correct?

A Yes.

Q Did you receive any other reinumeration at all during that period of time?

A No.

Q Now, at the time that you entered the employ of Galaxie, what else were you doing to earn a living?

A Well, at the time I entered Galaxie Foods, I also had another business, which was -- I used to be a process server. I used to give people eviction notices.

Q Now, sir, when did you give up the process serving?

A Basically, the end of '71, when I went full time with the Galaxie Foods developing into retail.

Q Now, when you had your introduction to Galaxie Foods, with whom did you speak?

Who offered you the job?

A Arty Lee and Ken Rosenthal.

Q You say that you were promised a salary?

A Yes.

Q What was that salary to be?

A It was roughly around 20 to $25,000 a year.

Q Well, roughly 20 to 25. Was there any other

factor to determine whether it would be 20 or 25?

A Well, they said they'd like to pay me a larger salary but they'd start with 20 and if there are any profits, bonuses at the end of the year, they'd give it to me.

Q I see.

Now, you mentioned in your direct examination three types of meetings; Opportunity, Step-up and Training. Am I using the terms correctly?

A Yes.

Q Did you ever speak at an Opportunity meeting?

A Just at the very first one.

Q When you say "the very first one" you mean just one meeting; is that correct?

A Yes.

Q What did you say at that meeting?

THE COURT: Well, let's clarify what he means by the "very first one".

MR. GOIDEL: Yes sir.

THE COURT: The very first opportunity meeting that was held or the first one after you made your connection with Galaxie?

What are we talking about here?

TEH WITNESS: The first one after I joined,

after I became employed by them.

BY MR. GOIDEL:

Q Were there meetings of that type --

THE COURT: Which would be August of '71?

THE WITNESS: Yes.

Q Were there meetings of that type before you joined?

A I have no idea.

Q Okay. But the very first opportunity meeting that was held subsequent to your joining, you did speak at?

A Yes.

Q What did you say?

A Well, again, I went through the retail portions, as far as salesmen were concerned. I stumbled through it. I made -- I am not a very good public speaker. I was very nervous up there, and I stumbled through what the salesmen could earn, if, again, they did certain things and if he acquired customers.

Q Did you have anything to say at that meeting with regard to the sale of franchises?

A No.

Q Did you ever speak at another opportunity meeting after that first one?

A No.

Q Now, the next type of meeting was a step-up meeting; is that correct?

A Yes.

Q Did you ever during your association with Galaxie speak at a step-up meeting?

A No.

Q Never?

A That was restricted to the executives and the -- the executives, the directors.

Q Fine.

Now, the training meetings, did you speak at training meetings?

A Yes.

Q Now, is a training meeting set up for the purpose of orienting the people with regard to the wholesale or the retail end of the business or both?

A I have no idea.

Q What did you say at the training meetings?

A I covered the potential of the service, what -- comparison of supermarkets, comparing A & P, which is the largest, with other chains in the area.

I broke down different departments, categories, for the franchise, the distributors. I explained basically the retail portion of the business, that I had been

researching.

Q Now, I show you this document and I ask you to look at it. Have you ever seen that before, sir?

A Yes.

Q Could you tell the Court what it is?

A It's a catalog listing all the products that were to carry, namebrand foods and non-food items.

Q What else besides the names of the products are set forth in that book?

A The discreptions of the products, the ounces of the products, the prices of the products, even the code numbers.

Q Who was in charge of the preparation of this document?

A Myself. The preparation of the document?

Q Yes sir.

A Well, I put together -- I put together what was to be in the catalog, but as far as the actual preparing of the catalog was done by the advertising man. His name is Chris Maranachio.

Q But you took care of obtaining a list of the products that were to go into it?

A The sizes and the prices.

Q Sizes and prices.

Tell me what type of --

THE COURT: Just a minute. So I will be clear, in other words, what you say you did was to prepare the information which appears in that book?

THE WITNESS: Yes.

THE COURT: But not the form in which it appears?

THE WITNESS: Yes.

THE COURT: Not?

THE WITNESS: No.

(Cont'd on next page.)

FLD. BY NOTES

CROSS-EXAMINATION

BY MR. GOIDEL (Cont'd):

Q Did you have any other people working with you in the preparation -- in the acquisition of all of that information?

A Yes. I had a whole staff of people.

Q How many people did you have working with you?

A I started off with three and I wound up with -- toward the end with anywhere from 13 to 15 people.

Q Now, tell me, aside from writing down the information, did you have to do anything to acquire the information?

A I had to speak to the sales representatives of the different corporations. I had to -- sometimes go to these places, see exactly what they were talking about. I had to go to Hunts Point market. I had to go to many facilities. We sat down, discussed them purchasing advertising space in the catalogue. We had to discuss promotional programs that they had at periodic times and the prices that we can charge for the products.

Q Did this books have to be updated or modified from time to time?

A Many times. In fact, we -- I would say at the -- minimum had to update it about 10 times. Every time a

new product came out or different size was found out, a different spelling was found out, we had to redo the catalogue.

Q Now, I notice that you have the prices of the items set forth on the pages. Didn't the prices change from time to time?

A The prices did change but the first catalogue it was under that these were loosely bound and pages could be changed at will, just by sending a new price sheet to the customers, so I was told to put the prices into the catalogue.

MR. GOIDEL: Your Honor, I'll offer this document in evidence, please.

THE COURT: All right. Show it to Mr. Lerner.

MR. LERNER: Do you have a date he prepared this?

Q Sir, do you know when this catalogue, this specific document went into effect?

A When the final catalogue went into effect was roughly around November of '72. When it was finally sent to the printer to be typeset and finalized, as far as I know.

Q This was made up, since it is typeset, this was made up in November of 1972; is that your testimony?

A Yes. The latter portion of '72.

MR. LERNER: No objection.

THE CLERK: Is that in evidence?

MR. GOIDEL: Yes, please.

THE CLERK: Marked Kirschenblatt's -- Defendant Kirschenblatt's Exhibit A in Evidence.

XX (So marked.)

BY MR. GOIDEL:

Q Now, Mr. Kirsch, going back for a moment to the sale of a franchise by you to a Mr. Beck, you remember testifying with regard to that?

A Yes.

Q And you remember that Mr. Lerner read to you a statement from the affidavit which you had submitted earlier in this case? And in that affidavit you state that "I categorically state that I have not" -- "that I did not take Mr. Beck to any bank"? Do you remember that?

A Yes.

Q And yesterday you told Mr. Lerner that in fact you did take Mr. Beck to a bank; is that correct?

A Yes.

Q Now, those two statements are contradictory of one another, are they not?

A Yes.

Q Would you explain what you meant when you

stated in your affidavit that you did not take Mr. Beck to any Bank?

A In the affidavit that was prepared and I signed, I was making reference to the fact that I took Mr. Beck to the bank for the purpose of acquiring a loan for him, which in fact he did not acquire a loan. In fact he gave me -- he gave Ken Rosenthal and Artie Lee a personal check so when I say I did take him to the bank, it was because he did want to go to the bank after he had given me his check to see because he had just come out of the army and he had the necessary funds but didn't want to tie them up.

So he gave the company a personal check and then wanted to see if he could acquire the loan to offset that check he wrote for the company.

So, in essence, I did give -- take him, I drove him, he asked me to drive him to the bank as a favor so I did.

Q But he was not going to the bank, as I understand what you are saying, for the purpose of acquiring a loan to make an investment in Galaxy Foods; is that correct?

A Yes.

Q Did he tell youwhat he wanted the money for?

A Well, as I testified, he did say that he wanted to take out a personal loan and he asked me what was the best

thing to do. So I said point blank, "If you take out a personal loan, tell him it's a personal reason." And he said, "What are some personal reasons?" And I said, "Well, if you need furniture, furniture is your personal reason."

But he had, just like I said, come out of the army and he had an apartment and he in fact did need furniture.

Q Now, let me ask you this.

Do you or do you not know whether on that occasion Mr. Beck made application for a loan?

A Mr. Beck went into the bank and when he finally came out, after several minutes, he said he decided not to take a loan, that he'll let it ride as it was.

Q I see. But I think you say -- said that he had already paid for his investment in Galaxy?

A Yes. He had given Ken Rosenthal and Artie Lee a personal check.

Q Did that check vounce or was it negotiated?

A I have no idea.

Q Okay. Now, sir, we've heard the word Board of Directors used. Would you tell us, in addition to the Board of Directors, was there a body known as the executive board?

A Yes, I guess you can call it the executive

board.

Q In fact, that terminology was used on an outline of the organization of Galaxy Foods, executive board; isn't that correct?

A Yes.

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(Continued on next page.)

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CROSS-EXAMINATION

BY MR. GOIDEL: (Cont.)

Q Now, would you tell us who comprised the so-called executive board?

A Well, at the beginning there was Ken Rosenthal, Artie Lee and Ralph Avni. But then after -- from what I understand Ken Rosenthal sold out. Then comprised of Artie Lee, Ralph Avni and Charles Horowitz.

Q Were you ever on the executive board?

A No.

Q Did you ever attend a meeting of the executive board?

A No.

Q DId you ever make any statement to the executive board in writing?

A No.

Q Were you ever called upon for your opinion at any "executive board" meeting?

A No.

Q Now, tell us what the Board of Directors as distinguished from the executive board was? Who comprised it?

A Well, there was several people. In fact, there were quite a few people. There was the vice presidents

and the president and then there was the corporate vice president, the corporate president and chairman of the board.

There was even the warehouse manager there sometimes. And what we discussed was what we had previously done in that week. And each department gave a listing of what had happened.

I gave my listing as to what we had done for the catalog and asked for some suggestion as to what they felt we should carry in the catalog.

Q And the warehouse manager, I take it, gave his report at the Board of Directors meeting?

A Yes.

Q I see. Now, did you ever take votes at this so-called Board of Directors meeting?

A No.

Q Did you ever take a vote as to what the corporate policy should be on a specific matter or specific item?

A No.

Q Where were corporate policies discussed, if you know?

A I do remember several times we were sitting around this Board of Directors' meeting and then there was a -- like they would get up and go on to this -- their own little office.

Q Who would get up?

A Artie Lee, Ralph Avni and Charles Horowitz would go into their executive board meeting as you might call it, come out and give us their decision to a policy.

Q I see.

But you were never asked to vote on any policy?

A No.

Q Now, sir, there are some terms here that I have never seen before. Corporate vice president; do you know who the corporate vice president was?

A Charles Horowitz.

Q I see.

Is there a difference between a corporate vice president and a vice president?

A From my understanding, the corporate vice president is a vice president of the formed corporation.

And a vice president is only a -- a vice president in charge of his particular function. Not of the corporation.

Q I see.

Who chose these names; Board of Directors, Executive Board, corporate vice president, vice president?

A That was originally -- I would assume, I don't know, but it was originally given by Artie Lee and Ken

Rosenthal.

Q Who made you a member of the Board of Directors?

A Artie Lee and KEn Rosenthal.

Q How did they make you a vice president? Did they say, "Hey, you're a vice president and a member of the Board of Directors"? Or did they sit at a Board of Directors meeting and have a vote to elect you as a member of the Board of Directors?

A No. They simply said,"You're a vice president, in charge of marketing."

Q I see. Thank you.

Would you look at this document?

A Yes.

Q Would you tell us what this is, if you know?

A This is a food catalog that we are currently using in Futuristic Foods. It's a listing of our meats, produce and sea food items, describing code numbers, the item, the description of the item, how it's packages, the average weight of the package and how many people it will service.

It also gives the consumers pictures with recipes and also information about meats, produce and sea food.

Q I ask you what this is, sir?

A This is one of our price lists that we are sendin

out every two weeks to our consuers. People that are already using our service, buying food from us. It also lists the items we carry by code number, description, weight , size, package.

It also goes into -- we have expanded into, -- our frozen food line and also our canned goods line, which is beverages and spices.

Q Now, I take it that the price list is not a part of the catalog itself as was the case in connection with Galaxy; is that correct?

A Yes. Prices in these perishable items change basically daily and there is no way we can put a price in this catalog. It is laminated. It is fairly expensive. It is colorful and we could not change this catalog every time a price changed in meats and produce and sea food.

Q Tell me, does Futuristic Foods sell food?

A Yes, we do.

Q How much food does it sell a week?

A Approximately $20,000. Every week.

Q Where does it warehouse or store this food?

A The corporation owns a facility out in Franklin Square, Long Island.

MR. GOIDEL: Your Honor, I am going to offer these documents in evidence.

MR. LERNER: Has he testified that he prepared this?

MR. GOIDEL: Would you like him to?

BY MR. GOIDEL:

Q Mr. Kirsch, who prepared the price lists?

A The price list is prepared by our buyers and meat manager, plant manager out in Franklin Square. He puts together the price of the current items that we are selling. He has to find out what the current market price is and then work up the percentages of cutting loss and allowing for waste and what the package is going to cost.

(continued next page.)

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Q Do you know for a fact whether this price list was sent to the purchasers of food, the holders of catalogs, of Futuristic Foods?

A Yes. We have been mailing out our price list every two weeks. We have just about eight thousand consumers that have used our service at least once, if not more than once, and we mail them out a price list every two weeks.

MR. GOIDEL: May I know if counsel has an objection to the offer?

MR. LERNER: No objection.

MR. GOIDEL: Thank you. May we have them marked separately, please?

THE CLERK: Catalog marked in evidence as Defendant Kirschenblatt's Exhibit B.

Price list marked Kirschenblatt's Exhibit C, both in evidence.

(So marked.)

BY MR. GOIDEL:

Q Mr. Kirschenblatt, I show you Plaintiff's Exhibit 7 and ask you to look at it.

A Yes.

Q Did you have anything to do with the preparation of that ad?

A No, sir.

Q When is the first time you saw that ad?

A When it was shown to me at one of these board meetings.

Q Was it discussed at the board meeting?

A No, it was just shown to us, that that's what was in the paper.

Q It had already appeared in the paper?

A Yes.

Q Was a vote taken at this so-called board of directors meeting to seek the approval of its appearance in the ad?

A Not to my knowledge, no.

Q Sir, I show you Plaintiff's Exhibit 6.

A Yes.

Q Did you prepare that document, sir?

A No.

Q Did you have anything to do with the preparation of that document?

A No.

Q Do you know who prepared that document?

A No.

Q Do you recall when it was that you first saw that document?

A When I was asked to perform the first part of

this at the very first opportunity -- I was asked to do the salesman's part of the business.

Q Were you ever asked at any meeting to approve the text of what appeared in there?

A No.

Q That is the same meeting where you say you spoke with regard to the retail aspect of the business?

A Yes.

Q Did you have anything to say at that meeting, other than as related to the retailing of food, or the prospect of retailing of food?

A No.

Q Sir, I show you Plaintiff's Exhibit 3. Did you write it?

A No.

Q Did you prepare it?

A No.

Q Do you know who wrote it?

A No.

Q Do you know who prepared it?

A No.

Q Do you know whether it was ever presented to a board of directors meeting for approval before its preparation?

A No.

Q Do you know whether it was ever discussed by the executive board before it was prepared?

A No, I don't know if it was discussed.

Q Nobody ever sought your approval of it, did they?

A No.

Q When you saw it, was it in the form that it appears in right now?

A It was given to me at one of the board meetings, yes.

Q In this form?

A Yes.

Q Already printed?

A Yes.

Q Sir, I show you Plaintiff's Exhibit 4.

A Yes.

Q Did you write the text of that?

A No.

Q Did you organize it for printing?

A No.

Q Did you have anything to do with its printing?

A No.

Q Was your approval sought in relation to what appeared in the text?

A No.

Q Was it ever presented at a so-called board of

directors meeting for approval by the so-called board of directors?

A No.

Q When you first saw it, was it already in printed form?

A Yes.

Q Did anybody ask your approval of it?

A No.

Q I show you this document marked as Plaintiff's Exhibit 8.

A Yes.

Q Did you prepare that?

A No.

Q Did you cause it to be printed?

A No.

Q Did anybody request your approval as relates to its preparation or printing?

A No.

Q Did anybody present that form at any board of directors meeting for approval?

A No.

Q I show you Plaintiff's Exhibit 5, sir. Would you look at that? Did you write the text of that?

A No.

Q Did anybody seek your approval as to what was contained in it?

A No.

Q Was it presented at any so-called board of directors meeting for your approval or the approval of the other so-called members of the board of directors?

A No.

Q Did you cause same to be printed?

A No.

Q When you first saw it, was it in the form in which it appears today, in printed form?

A Yes.

Q You stated that you left Galaxy in January of 1973, is that correct?

A Yes.

Q Will you tell us why?

A Well, it had been coming for a while, when we finally got into retail operation, this fact that we wouldn't pay commissions on the first eight or ten thousand customers wasn't what I had deemed to be proper management, plus the fact that I was purchasing products and then I was told there was no more money that I could spend to purchase the necessary products.

I was point-blank being blamed for buying too

much and having it in the warehouse for too long a time when really I was told to buy the products and it wasn't my job to have it retailed.

So, it was brewing that finally I just didn't like management's decisions as to the operations of the retailing. I felt that they weren't truly interested in retailing the food to consumers.

Q Did you mention this to anyone?

A Well, I didn't mention to anybody, but it just blew up one day that I just didn't like their decision that they were rendering, and I just finally said it's not for me.

MR. LERNER: Can we have a point of time?

BY MR. GOIDEL:

Q When was it, sir, that you said, "this is not for me"?

A The beginning of January, '73.

MR. LERNER: When did you find out --

MR. GOIDEL: Would you like me to ask it?

Q When did you first learn that it was not their intention to market the food, as you had understood that it would be marketed, and that there would be this reservation of eight to ten thousand individuals whose orders no one would receive commissions on?

A I had heard about the decision that we would not

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pay commissions in the latter part of '73, and it really didn't take effect -- '72, I'm sorry, and it really didn't take effect on me until we had the merchandise in the warehouse and we had it on the shelves and the distributors were more or less, from my understanding -- and I can see because the products weren't moving as they should have been moving, they didn't like it and therefore I felt that, well, there is no real way that this business is going to succeed if they are not going to pay commissions on the sale of food, and also if we cannot buy food -- if money was not allotted to buy the merchandise necessary.

So, it was basically -- I came to this decision end of December, beginning of January.

Q Futuristic Foods, which is the firm that you presently work for, do they retail food?

A They are retailing food since December of 1973.

Q Do you know when they were organized?

A No.

Q Since December of 1973 they have been marketing food, is that correct?

A Yes.

Q Do you know how much per week?

A Just about twenty thousand dollars per week.

Q Do they have any trucks to deliver this food with?

A Yes, we have ten trucks.

Q Do they pay commissions on the sale of the food?

A Yes, we have been paying commissions since the very first day we delivered merchandise.

Q Are they behind or are they in arrears in the payment of the commissions on the sale of food by the franchisees?

A Only if you consider that manpower has to do the physical writing of the checks and drawing the checks.

Q How frequently do they pay the money?

A Every month, once a month.

Q Are they current?

A They are current, yes.

Q Sir, did you own any stock in Galaxy?

A No.

Q Do you own any stock in Futuristic?

A No.

Q So that I understand it, your only association with Galaxy was that of an employee, is that correct?

A Yes.

Q Who received a salary of twenty thousand dollars, is that correct?

A Yes.

Q And a promised bonus of something upwards of an

additional five thousand dollars based upon something that we haven't yet ascertained?

A Right.

Q Do you know what that bonus was to be predicated upon?

A No. My understanding, from what I gathered, was it was based on the profits at the end of the year.

Q One last thing: are you absolutely certain that Mr. Beck gave you his own personal check and did not go to a bank and borrow money in order to invest in Galaxy?

A Yes. Mr. Beck gave his personal check, not to myself, but to Ken Rosenthal and Artie Lee.

MR. GOIDEL: No further questions, your Honor.

MR. LERNER: I have short redirect, your Honor.

MR. PADILLA: I have some.

MR. LERNER: I'm sorry, Mr. Padilla.

(continued on next page)

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CROSS-EXAMINATION

BY MR. PADILLA:

Q Don --

MR. PADILLA: Is it all right if I call him Don, rather than Mr. Kirsch?

THE COURT: You better call him Mr. Kirsch for the sake of the record.

Q Mr. Kirsch, you testified that you used -- during the training sessions you would be in charge of explaining or teaching more or less the marketing part of Galaxy Foods, correct?

A Yes.

Q Did it ever, during this training session -- did you ever request aid from the people being trained, the new distributors that came in, if any of them were interested in ever getting into the marketing as employed by Galaxy besides their own distributorship, did you ever request aid from people, anyone that had any talents, or any desire to work in that particular field to come forward and see you?

A Yes, several times.

Q Did anybody ever come forward?

A Yes, several distributors wanted to help put the catalog together.

Q Did I ever come forward and speak to you about my desire to aid you in putting Galaxy's retail operation together?

A YEs, you came to me once and you said you had knowledge and you had contacts into the Spanish market, and that you would like to help put together the Spanish products.

I didn't know anything about Spanish food at the time and I used yourself and the people that you had helping to put together the Spanish products.

Q During that time, do you remember, recollect, more or less, when that happened, when was it that I got involved into that work, the working end with you in the warehouse and putting together the Spanish part of the catalog, or Spanish products?

A I don't remember exactly when, but it would have to be sometime in the summer of '72, maybe fall of '72.

Q Say more or less around June?

A I would say, if you pinpoint it down to the summer of '72, July, June, August, something like that.

Q During that time, my participation, as far as work, hours put into it, what would you say they were, you know, many hours, was I working constantly, was I, you know, just playing games on it or not really, you know -- was I really committed to what -- to my promise to you that I

would aid you?

A No, you helped me in many areas, as far as the Spanish products. Not only in telling me -- advising me what to carry but basically teaching me as to what the Spanish people wanted, because there are many facets of the Spanish community, there are Puerto Ricans and there are Cubans.

Q Did I ever also partake in contacting the particular manufacturers of Spanish based food or products?

A Yes.

Q Because of the work I was doing, did I go out and reach other people to assist me?

A Yes, you got several people, George Carbonel and several other people -- his name stands out, but you had several other Spanish speaking people that helped you.

Q Do you recollect as to how long I worked at this with you, more or less working with you; when did I stop doing it?

A I really can't give a date. I'm sorry.

Q I will refresh your memory .

Do you remember the first annual dinner-dance that Galaxy Foods held at the Holiday Inn in Manhattan in September of 1972, the end of September, 1st of October, their first installation -- an award dance where all the

awards were given? Do you recollect that night?

A No.

Q I don't see how you can forget or anyone else can forget it. But at that time, do you recollect my being given a position in the company, remember my being made something or other?

A There were a lot of awards given out that night for performance --

(continued next page.)

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Q Yes, awards, I am not talking about awards. Positions were all given out. If I refresh your memory, you recollect that many people were promoted to different positions, people who were vice presidents of a particular field were promoted to general vice presidents, some directors of this were made, directors of the other. Do you remember whether, if any position was given to me at that time?

A I honestly can't remember.

Q But it was -- does it refresh your memory that it was until that time, basically after that, that I actually really in a way stopped working in your field, that dance, that banquet that I really stopped?

A I don't remember when you exactly stopped. I do remember you basically stopped rather abruptly and left it to the people that you had been working with.

Q Right, of course left them there doing the work.

A Right.

Q Before you testified earlier when it was brought out to you about a money hum that was used at Galaxy presentations or Galaxy Opportunity Meetings. Do you also remember that hum being used, even at the beginning of Galaxy when you did attend any of the

presentations?

A No.

Q Actually, as a matter of fact that that didn't really get started until somewheres around February of 1973 when a special team of supposedly good wholesalers got started in Galaxy, which they called the star team.

A I don't believe it started that late. By February '73, I was out of the company.

Q It was maybe a little before. All right, I just wanted to get that point here.

A I had left the company in January '73.

MR. PADILLA: I have no further questions.

MR. LERNER: May I have approximately two or three minutes, your Honor.

THE COURT: Of course. All you need.

(Pause)

REDIRECT EXAMINATION

BY MR. LERNER:

Q Mr. Kirsch, we previously marked as Exhibit 6 this document, and I believe you have testified that you read from it at an Opportunity Meeting.

A You read something similar to it at an Opportunity Meeting, yes. It wasn't in this form. It was just typewritten.

Q They were typewritten notes?

A Yes.

Q Have you seen this document before?

A Yes.

Q The language that you read substantially comports with that which is in this document.

MR. GOIDEL: Objection, unless he asks him to read what it is that he is specifically referring to in that document.

Q Would you please point out the area of this document which is similar to that or identical to that which you read at the Opportunity Meeting.

A It is about the salesman enrollment, where if they were to acquire 20 new customers at $25 per week per new customer, at 5 per cent commission, they would earn $125. I did the salesman enrollment, in other words, if you wanted to work as a salesman this is what you would be earning.

Q How far does it continue in the document?

A It goes up to this part right here. It says, "Ladies and gentlemen, after two months of this volume the salesman could be earning $200 a week."

Q You began from the top of Page 2 --

MR. GOIDEL: Objection. He didn't say he

started from the top of Page 2. He was asked what he said that was similar to what appeared in there.

THE COURT: It would be helpful to know, since page references were made at the time, what pages we are talking about.

Q What page are you referring to?

A In this test right here, Page 2, "The average full time salesman ..."

Q To the top of Page 4?

A In here to the top of Page 4, yes.

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(Continued on next page.)

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REDIRECT EXAMINATION

BY MR. LERNER: (Cont.)

MR. LERNER: Do you have any objection if we mark this in? Mark it in evidence.

MR. GOIDEL: The whole document?

MR. LERNER: The aspect he was talking about.

MR. GOIDEL: Pages 2 through 4, I have no objection.

THE COURT: Perhaps during the lunch hour you can separate it.

MR. LERNER: Excuse me. Before the specific pages are marked.

BY MR. LERNER:

Q Did you state that you had occasion to see this document in its present form while you were employed at Galaxy?

A I was given a copy, yes.

Q At a Board meeting?

A Yes.

MR. LERNER: Then I'd like to offer the entire document, your Honor.

MR. GOIDEL: For what purpose?

MR. LERNER: To show that he had the document. That it was in his hands, in his possession.

Opportunity to read it.

MR. GOIDEL: Your Honor, I will have no objection as long as there is no inference drawn that he either prepared it or promoted its issuance. Or made any --

THE COURT: I think you brought that out, if I am not mistaken.

MR. GOIDEL: I said previously, sir, yes.

THE COURT: So I cant say that it doesn't have relevancy to the matters at issue here so I will overrule your objection to it and admit it into evidence.

MR. LERNER: Thank you.

THE CLERK: All right. Plaintiff's Exhibit 6 now marked in evidence.

(So marked.)

xxx

BY MR. LERNER:

Q Now, I'd like to briefly touch on the subject matter of Mr. Beck once again.

THE COURT: Let me say something to you, Mr. Lerner, in the interest of perhaps giving you time to turn to something more important. I think Mr. Beck has had enough said about him.

MR. LERNER: You're leaving me speechless, without anything to say.

THE COURT: Oh,come on, you must have some other avenues here opened up on cross.

BY MR. LERNER:

Q Let's turn to the Board of Directors' meetings.

Mr. Kirsch, you stated at the Board of Directors' meetings, each department would report concerning what progress it had made?

A Yes.

Q Do you recall the names of the different departments, or what their functions were?

A There was mine marketing. Then there was warehousing, trucking and administration.

THE COURT: Was that all in one?

THE WITNESS: No. No, sir.

THE COURT: So there was warehousing?

THE WITNESS: Administration.

THE COURT: And administration.

THE WITNESS: Trucking.

THE COURT: What was the last?

THE WITNESS: Trucking.

THE COURT: Trucking;and marketing you say was yours?

THE WITNESS: Yes.

THE COURT: Who was in charge of warehousing?

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THE WITNESS: Franz Quack.

THE COURT: Quack?

THE WITNESS: Yes.

THE COURT: All right. And administration?

THE WITNESS: John Celano.

THE COURT: John Celano?

THE WITNESS: C-e-l-a-n-o.

THE COURT: C-e-l--

THE WITNESS: C-e-l-a-n-o.

THE COURT: Oh, yes.

THE WITNESS: Trucking was Tom Rosenbach.

THE COURT: All right.

THE WITNESS: Then there was what they called field sales.

THE COURT: Field sales?

THE WITNESS: Yes.

THE COURT: Who headed that up?

THE WITNESS: There was Steve Roth.

THE COURT: Steve Roth?

THE WITNESS: Yes.

BY MR. LERNER:

Q All right.

Now, Mr. Kirsch, at these board meetings, would you leave after you gave your presentation?

A No.

Q Would you stick around to hear what everybody else had to say?

A Yes.

Q And were there discussions about how the company was coming along?

A Yes.

Q Anybody make a presentation?

A We all participated. I told them what I was doing in the way of catalog. John Celano told them what he was doing in the way of acquiring a computer operation, progress he was making.

Q Anybody report on number of franchisees who had come into the business at that point?

Was there a status report?

A There was a report given by Steve Roth that -- as to when he was holding training or as far as I could recollect when he was holding trainings or where the meetings were being held.

But I don't remember if he pointblank went into how many people joined or didn't join. How many people at the meetings, if that's your question.

Q Was there a report as to the financial condition of the company?

A No.

Q Was there a report as to when retailing would commence?

A No. We all basically were working for it as soon as possible.

Q Weren't target dates presented to those who attended the Opportunity Meetings?

A There were all target dates that we were trying to arrive at.

Q Who would assist in planning the target date?

A I was the executive management. They told us -- from the information we gave, such as my performance in putting together the catalog, John Celano's performance in acquiring the computers, they would say, "Well, can we reach this date?" And we would all say, "Well, we'll try for that date."

Q Did you play an integral role in deciding when a target date would be reached?

A THey asked me how soon I could have a finished catalog and I said, "Well, it de -- depending on how many people I have and everything else, I could probably do it in this length of time."

Q And didn't the ordering of food have something to do with the target date?

A Yes.

Q What did it have? How was it relevant to the question of the target date?

A I first had to see -- to put together the catalog, we had to determine how much space it would take up on the shelves that we had in the warehouse.

So we had to find out the dimensions of the cases that were going to be put on the shelves. So I had to contact the manufacturers and try to find their dimensions.

Some manufacturers just didn't have them available. And I was told pointblank roughly around September to order in the merchandise. I had set up a buying agreement, not myself,but I had made contact with this company in Connecticut and we set up to buy products from them in September and we received it in roughly in September.

Q In September of '72?

A Yes.

Q Do you recall when the first target date was?

A Not exactly, no.

Q Wasn't it in fact in June of '72?

A That's possible, but I believe --

Q How could you have a target date in June if the warehouse wasn't going to be ready until September?

A Well, when that -- I believe -- my memory serves, at that point we all were trying to shoot for June but I

physically could not have the catalog finished by May, even though I was working long hours on it.

Q Let's talk about the warehouse now. You said the warehouse couldn't be ready in all aspects until September.

Did you have a realistic target date of June?

A We had the warehouse, I believe we acquired the warehouse beginning of '72. If I am not mistaken, we had the warehouse for several months. The whole retail rested on my putting together the catalog which I was working basically long hours trying to do.

Q Didn't retail also rest on getting food into the warehouse, getting shelving up?

A First -- the shelving we -- they acquired and it was there. Then it was just a matter of installing it. But they didn't -- from what I understand, they didn't really put a heavy push because I didn't have the catalog finished. And I couldn't have it because it was just too much work to be done on it.

Q Do you know whether the initial target date of June '72 was represented to the -- by speakers at the Opportunity and the Sunday meetings?

A I don't know.

Q You don't know whether it was?

A No.

Q Do you know whether any of the target dates which were -- which the company shot for were represented to the potential investors and existing investors at the meetings?

A No, I don't know if it was.

Q WAsn't there any discussion at the board meetings when a target date was derived -- was arrived at, that that target date would be stated at the meetings?

A I don't remember if it was explained or not. I know we discussed different -- it was told to me,if you can do that, then we will shoot for the target date.

But I don't knwo if -- if it was discussed at the meetings.

(continued next page.)

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REDIRECT EXAMINATION

BY MR. LERNER (Contd):

Q Isn't it a fact that several -- several of the investors during the spring and summer of 1972 complained to you about not reaching the target date, which was suggested --

MR. GOIDEL: Objection

Q -- at the meetings?

MR. GOIDEL: Objection to the form.

THE COURT: All right. I'll sustain the objection to the form. Ask him, did any --

Q Did any existing investors ever complain to you about the company not reaching its projected target dates?

A Now that you refresh my memory, yes.

Q Several of them did, isn't that a fact?

A Yes.

Q What did you tell these people?

A Well, it wasn't just me. They did come into -- they called, they wanted to have a special meeting and a meeting was called and they expressed their views,, that they were dissatisfied, that they weren't making our target dates and it was explained to them that these things take time to put together the catalogues, to get the shelving together, to acquire the computers and to set everything up.

We were trying for it as we explained to them but it just wasn't physically possible.

Q But these people did bring to your attention that these target dates were being stated at the meetings, at the meetings in which prospective investors were attending; isn't that correct?

A I don't remember if they stated that per se. I don't know if they came out and said, "Well, this is being said at the meetings."

Q Did you yourself ever project a target date to the investors of the company?

A Not that I recollect, no. I never attended these meetings at that particular time.

Q I'm not talking about meetings. Did you ever do it through a mailing?

A Not that I could remember, no. I must add that you are talking about several years ago.

Q Well, I'm not going to attempt to tax your memory. I'd like to show you a document, a Xerox copy, it's dated March 10, 1972, and let me ask you if it refreshes your recollection, referring you specifically to the fourth paragraph, which says: "Now that our retail target date is fast approaching," I believe.

A It also states in here that, as I read it says, "Now that our retail target date is fast approaching, the heaviest concentration of work and effort must be made," and

@3 Kirschenblatt - redirect

I wrote, it is -- I signed it --

Q The question is: Do you recall making a projection of a target date?

A I didn't make a projection.

Q After looking at that document --

A I did not make a projection. I said now that the retail target is fast approaching. I didn't say when.

Q What did you mean by that?

A Well, I meant that the retail was fast approaching. That we were definitely getting into retail operation.

Q Does this refresh your recollection that someone in the company had made a projection of a target date?

MR. GOIDEL: Objection, your Honor. The document will speak for itself.

MR. LERNER: I'm asking, using it to refresh his recollection, your Honor.

THE COURT: I will overrule the objection.

Do you know whether a target date had been fixed that affected your operation?

THE WITNESS: I don't remember if a target date was fixed. That letter that I just recalled as I was reading it, I was asking for substance, as Mr. Padilla asked me, if I asked for substance, I did, and what I

stated in there, I asked for help, to help me put the retail into operation.

THE COURT: Yes. But since it makes reference to: Now that the target date is fast approaching, does it refresh your recollection that there had been a target date of some kind set?

THE WITNESS: I believe as Mr. Lerner has stated that June of '72 was a stated projection.

THE COURT: June of '72?

BY MR. LERNER:

Q But the question to you, Mr. Kirsch, listen to the question carefully. I say, do you recall anyone making a statement to the effect that June of '72 or some other date was going to be the target date for the retailing of food?

A Well, you keep mentioning June of '72.

Q Take any day. I don't care. Do you recall anyone using a target date?

A I do remember hearing that June of '72 used but I don't recall. I was never at the meetings when it was stated.

Q Does this letter refresh your recollection that you were aware of some target date?

A Yes, obviously it was June of '72.

5 Kirschenblatt - redirect

Q And not only were you aware of it, but does this letter refresh your recollection to the fact that also the investors were aware of a target date?

After all the letter is addressed to all distributors and field managers.

MR. GOIDEL: Objection, your Honor. Unless he knows whether the letter was mailed out and to whom.

MR. LERNER: I am not offering the letter.

THE COURT: Why don't you ask him when he previously saw it.

Did you previously see that letter that's been shown to you?

BY MR. LERNER:

Q Was that your signature on the letter?

A That's my signature.

THE COURT: You sent it out; is that it?

Q Did you prepare this letter?

A I typed it out and I gave it to the people to send it out.

THE COURT: It went out over your name?

THE WITNESS: Yes.

Q The question, Mr. Kirsch, is, do you know now whether the distributors were aware -- and the field managers were aware that there was a target date back in March of 1972?

6 Kirschenblatt - redirect

A Again, I was not at the meetings, that they were told it but I made reference to the fact that there was a target date so they probably were aware of it. But I was not at the meetings. I was asking for help because at that time I was setting up the catalogue. I was asking for them to come down and help me set the catalogue up.

So I was not at these meetings when they may have heard it.

Q Did you --

MR. LERNER: I'd like to offer this.

MR. GOIDEL: For what purpose?

MR. LERNER: The purpose that he was aware that there was a target date.

MR. GOIDEL: I have no objection, if that is the purpose, your Honor.

THE COURT: All right.

MR. GOIDEL: Your Honor, I think Mr. Padilla would like to see it.

MR. LERNER: I'm sorry.

THE COURT: All right. Let it be received.

THE CLERK: So marked, Plaintiff's Exhibit No.10 in Evidence.

xxx (So marked.)

BY MRL LERNER:

Q Now, referring you to Plaintiff's Exhibit 10, Mr. Kirsch, referring to paragraph 4, which begins with the phrase: Now that our retail target date is fast approaching," when you wrote that phrase, Mr. Kirsch, did you assume that the investors in Galaxy knew that the target date was approaching?

A I can't remember if I assumed anything. I obviously did write that the target date was approaching, so I must have assumed that they either were aware of it or I was trying to inform them in a different manner.

Q How many target dates were discussed at the directors' meetings?

A Well, they used to ask: When can I have the catalogue finished? And I would tell them that I needed more time or I was doing this, this and this.

Q Well, just answer the question.

How many target dates, it calls for a number now. How many target dates were discussed at the directors' meetings?

A I really couldn't put a number to it. I don't remember how many.

Q Can you estimate the number?

A I really wasn't even aware that -- like you said

before, I wasn't aware that we did have a target date.

Q You weren't aware that there was a target date?

A Before you showed me that document, I didn't -- wasn't aware that there was a target date.

Q Didn't you testify before I showed you the document that there were target dates discussed and arrived at at meetings?

A You asked me prior to showing that document if we had discussed when I could have the catalogue finished or when we could go into operation.

Q You don't recall target dates being discussed at directors' meetings now?

A Now that you refresh my memory, the target date of June '72 does stick out.

Q Were any other target dates discussed at meetings?

A Not that I recall.

THE COURT: Is this a good place to break? It's five after 1:00.

MR. LERNER: All right. I don't think I'm going to have -- I'm -- I don't think I'll have anything more.

THE COURT: All right. We will break until 2:00.

(Luncheon recess.)

AFTERNOON SESSION

1/1

DONALD IRWIN KIRSCHENBLATT,

previously being sworn, resumed the stand, testified further as follow

REDIRECT EXAMINATION

BY MR. LERNER:

Q Mr. Kirsch, did you discuss with Mr. Beck the way he was going to come into Galaxie, that is, the type of franchise he was going to purchase?

A Mr. Beck wanted to -- as I think about it, Mr. Beck wanted to start as a distributor for $3,000, but couldn't -- didn't have $3,000, so he decided to join the field manager, which at that time was a thousand dollars.

Q Pardon me?

A At that time was a thousand dollars.

Q Did he ever attempt to raise the additional $2,000, if you know?

A Did he ever attempt to?

Q Did he attempt to?

A Later on he did raise the other $2,000 and became a full distributor later on.

Q I know. But I am referring to the time around which he decided to join Galaxie, did he make an attempt thereabouts to raise the initial $2,000?

A Not that I know of, no.

Q Isn't it a fact that you suggested to Mr. Beck that he go to a bank to get a loan in an attempt to join in as a distributor?

A No.

Q That statement I just made is inaccurate; is that right?

A Yes.

Q You have also testified that you did accompany Mr. Beck to the bank on one occasion, is that correct?

A When you say "accompanied him" --

Q Go with him.

A He asked me to --

Q Did you go with him to the bank on one occasion?

A I gave him a lift to the bank, yes.

Q On one occasion?

A After he gave me his check to join the business.

Q How many times did you go with him to the bank?

A Just once.

Q And the reason why you testified you went with him to the bank was not to raise money for Galaxie but for personal reasons; is that correct?

A Yes. He had already joined Galaxie. He already gave his personal check in to the company.

Q Is it possible that he went to the bank -- Do you know if he went to the bank on that second -- on that occasion in order to raise the additional $2,000 so he could become a distributor with Galaxie rather than a field manager?

A I don't know.

Q You don't know that.

A He told me what he wanted to do -- Like I said before, he had the funds. He'd just come out of the Army, he was going to put it down and then he wanted to acquire the funds, you know, to cover himself because he also wanted to buy furniture. That's what he told me.

Q Listen to the following questions and the following answers. The questions were posed to you by Mr. Garmansky on September 14th and the answers are the ones which you gave on that date.

"Question: Why did you..." meaning you, Mr. Kirsch -- "...write in 'distributor'?"

At that time Mr. Garmansky was referring to Mr. Beck's application.

Your answer: "At the beginning he said he was going to join as a distributor. Then he brought

his wife back the second time and they couldn't get the funds, so we crossed it out and made it a field manager."

Do you recall that taking place? Do you recall you giving that answer?

A I don't recall that answer given, but I guess if it's there I gave it.

Q Do you adopt the answer that is stated here as being your own?

A What is there is in fact true. He did want to join as a distributor but couldn't raise the $3,000.

Q Couldn't raise the money, right?

Next question: "Question: Are you sure that is how it happened, or did you just write 'distributor' in to show the contract was already filled out and he should join as a distributor?

"Answer: No. He came down to our presentation by himself the first time. He said he was going to join as a distributor. We filled out the form right there and then. Then he brought his wife back and there was no way he could get the five -- I believe it was $5,000 at the time -- no, it was $3,000, they couldn't get it.

"Question: Did you ever suggest to anyone

else other than Mr. Beck that he should go obtain a bank loan to join Galaxie?

"Answer: Obviously, my record would show my memory wasn't too good with Mr. Beck, therefore, I am going to say that I don't remember saying to anyone else -- but again you are saying on a broad basis, I would have to say possibly.

"Question: Do you recall anyone else, Mr. Kirsch?

"Answer: No."

Do you recall those questions and do you recall giving those answers?

A I don't recall the question, but like I said, if it's there I guess it is there and I said it. But, no, I did not tell anybody to go to the bank for a loan for Galaxie Foods.

Q But you say "anyone else" in the transcript, Mr. Kirsch. Doesn't that mean that you accompanied Mr. Beck to the bank?

MR. GOIDEL: Objection, your Honor.

THE COURT: That is argumentative. Sustained.

MR. LERNER: I will withdraw the question.

Q Listen to these questions and answers, Mr. Kirsch, reading from the same transcript:

"Question: Did you suggest to Howard Beck that he take out a bank loan to join Galaxie?

"Answer: Possibly I may have suggested it. possibly.

"Question: Well, is it not a fact, Mr. Kirsch, that you went to the bank with Howard Beck to file the loan application to take out a bank loan?

"Answer: As you were saying, I was trying to recollect. I remember going to the bank in Great Neck, yes.

"Question: So it is true that you did suggest to Howard Beck that he take out a bank loan and it is true you went to the bank with him?

"Answer: I stand corrected, yes."

Do you recall those questions being put to you and do you recall the answers which you gave as stated here in the transcript?

A I do not recall the exact question that was asked to me or my answer, but as you have it there, obviously I must have stated it.

Q Was it true when you stated it?

A No, because as I was thinking about it and as I've just explained to you --

MR. LERNER: I have no further questions.

MR. GOIDEL: Let him finish his answer, please. You asked him a question and he is answering it.

MR. LERNER: Was it true when he stated it, and he said no.

If the Court wishes him to complete the answer, you can have recross.

RECROSS EXAMINATION

BY MR. GOIDEL:

Q Why did you make the statement on the record that is being alluded to?

A As I said in the record there, I didn't remember, and I made mention several times that possibly -- you know, that I didn't remember. Possibly, as he asked me questions, possibly it was true, but it wasn't, because as I thought about it, Mr. Beck put a personal check into the company.

Q By the way, was this transcript ever sent to you for signature?

A No.

Q After giving the testimony that you gave before Securities and Exchange Commission, did anybody ever call you back to review it, to read it, or anything of the sort?

A No.

Q Do you recall how it was taken down?

A I was called down to the Securities and Exchange Commission. Mr. Garmansky had two reporters there, and he said -- asked me these questions.

Q And they took it down on a machine of some sort?

A Yes.

Q Let me ask you another thing, and I forgot to ask this of you previously: Did you ever have authorization to sign checks for Galaxie Foods?

A No.

Q Did you ever sign checks for Galaxie Foods?

A No.

Q Did you ever sign contracts for Galaxie Foods?

A No.

Q Did you ever expend moneys for Galaxie Foods for which you would put in checks and ask to be reimbursed?

A Other than my expenses for cab fare, no.

MR. GOIDEL: Thank you. No further questions.

MR. PADILLA: I have one question.

RECROSS EXAMINATION

BY MR. PADILLA:

Q I have one question, Mr. Kirsch. Before, when

you testified that I had worked with you for some time in the retail operation of Galaxie Foods in helping to put together the Spanish part of the catalog, to your knowledge did I ever receive any moneys or any wages or any type of compensation for the work that I did?

A No, you never received anything.

MR. PADILLA: Thank you. That's all.

THE COURT: Anybody else?

If not, you may stand down, Mr. Kirsch.

(Witness excused)

(Continued on the next page.)

MR. GARMANSKY: Your Honor, the Commission would like to call as its next witness Mr. Arthur Lieberman.

THE CLERK: You are under oath, Mr. Lieberman.

THE COURT: You may sit down. You are already under oath.

ARTHUR LIEBERMAN, having been previously sworn, resumed the stand and testified further as follows:

MR. GARMANSKY: Your Honor, I have already asked this witness several questions. I would like to begin over, with the Court's permission.

THE COURT: If I may refresh your recollection by saying you asked him whether he was also known as Artie Lee, which he agreed he was; that he worked as an entertainer in Oscar's Restaurant in Brooklyn; that he said he was approached by Kenneth Rosenthal in about June or July of 1969 with regard to Galaxie. Then he ultimately left the stand.

MR. GARMANSKY: I will continue from there, your Honor. Thank you.

DIRECT EXAMINATION

BY MR. GARMANSKY:

Q Mr. Lieberman, was Galaxie Foods formally set up as a corporation?

A Yes, it was.

Q What state was it incorporated in?

A New York.

Q When, Mr. Lieberman, if you know?

A September, I believe it was, 2nd, 1971.

Q Who were the incorporaters, Mr. Lieberman, of Galaxie?

A Ralph Avni, Kenneth P. Rosenthal and myself.

Q Did you become a stockholder of Galaxie at the time of incorporation?

A Yes, I did.

Q What percentage did you own in Galaxie?

A I owned 33 percent of the issued shares of stock. There were, I believe, 200 shares issued, and -- rather, 200 shares at incorporation, 100 were outstanding, 100 were issued. I owned about one-third of the stock, 33 shares.

Q What did Mr. Avni --

THE COURT: Let me see if I understand that. Two hundred were issued, a hundred were -- Two hundred were authorized, that's what you really meant?

THE WITNESS: That's correct.

THE COURT: And 100 were issued?

THE WITNESS: Yes.

THE COURT: Was that split three ways?

THE WITNESS: Yes, split three ways.

THE COURT: So that's how you got the 33-1/3?

THE WITNESS: Thirty-three shares.

THE COURT: Thirty-three?

THE WITNESS: That's correct.

Q What did Mr. Avni and Mr. Rosenthal own?

A Mr. Avni owned 33 shares, and Mr. Rosenthal owned 34.

Q Mr. Lieberman, will you please tell the Court what the business purpose of Galaxie was when it was set up?

A We were going to establish a direct-to-the-consumer supermarket. In other words, a free home-delivery service of all supermarket items through a catalog, telephone delivery service.

THE COURT: Direct free home delivery; is that it?

THE WITNESS: That's correct, your Honor.

THE COURT: Out of a catalog.

BY MR. GARMANSKY:

Q Mr. Lieberman, where was the needed capital to come from for this operation?

A From the sale of franchises.

Q Prior to Galaxie, Mr. Lieberman, what jobs did you hold?

A I worked for -- I owned a boutique with Kenneth P. Rosenthal and I was working as an Assistant State Director for Koskot Interplanetary.

Q Will you explain what Koskot Interplanetary, Inc. was?

A It was a business where they sold cosmetics and -- mainly cosmetics and also where they sold franchises.

Q Would you please explain what these franchises were?

A What they were? They were nonterritorial rights to solicit customers to service with the cosmetics.

Q Did these franchises also entitle a person to recruit others into Koskott to receive a commission?

A Yes.

MR. GOIDEL: I will object. This defendant has already consented to injunctive relief. He has also consented to the payment of a certain sum of money.

His background in relation to this litigation at this point, other than his activities in connection with the defendant corporation, are irrelevant and immaterial.

THE COURT: I have to disagree with you there, Mr. Goidel, and I will overrule your objection.

Whatever his background is, it certainly does not disqualify him, as I see it, from telling the Court what the facts are.

MR. GOIDEL: As to his background?

THE COURT: No, not only as to his background, as to the operations of Galaxie Foods.

After all, to that extent, the relative position of your client would have to be viewed by the Court in the context of the whole operation.

So there is nothing surprising about the Commission putting on as witnesses anybody who knows the facts.

MR. GOIDEL: I realize, your Honor, but he is not asking for facts of Galaxie, he is asking for facts of Koskott.

THE COURT: Well, that might be considered a bit of a detour, let's put it that way, and if that is what your objection is, just as to Koskott --

MR. GOIDEL: Yes, sir.

THE COURT: I'm sorry, I thought it was a rather broad objection the way you stated it.

MR. GOIDEL: The question was dealing with

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Koskott operations.

THE COURT: I'm sorry, I misinterpreted the scope of your objection.

MR. GARMANSKY: Your Honor, the background material is necessary in order to prepare the groundwork for what Galaxie is, how it operated and what it is. This witness is a very high executive in Galaxie, and the background material is necessary to show what Galaxie was, in effect, based upon, what type of business it was.

THE COURT: What you really want to say is he was schooled in the technique of organizing something like this; is that it?

MR. GARMANSKY: Exactly, your Honor.

THE COURT: I will permit that. I have to make these judgments, as you understand, pretty much from instinct, and my instinct tells me this is distinctly relevant to the issues I have to deal with.

That does not necessarily mean you are going to come out on the short end of the stick.

MR. GOIDEL: Thank you, Judge.

MR. GARMANSKY: Would you read back the last question?

(Question read back.)

BY MR. GARMANSKY:

Q Mr. Lieberman, what dates were you associated with Koskott?

Q I was associated for approximately a year, from June to June, or July to June -- in other words, from 1970 --

Q What year?

A June 1970 or June -- to June or July 1971.

Q You testified you were the assistant director for wholesale for the State of New York?

A For Manhattan only.

Q The wholesale --

THE COURT: Wait a minute. I thought you described yourself as Assistant State Director.

THE WITNESS: Yes.

THE COURT: But you mean your area was the Borough of Manhattan?

THE WITNESS: As I understood it, the assistants had different boroughs. The State Director had the State, so I was Assistant State Director, pertaining to Manhattan, and then there was one man over me in that -- in the state.

THE COURT: Did you understand that your jurisdiction was the Borough of Manhattan?

THE WITNESS: That is correct, your Honor.

BY MR. GARMANSKY:

Q Mr. Lieberman, would you tell us your duties when you held this position, please.

A Yes. I supervised at meetings where prospective franchisees were introduced. I conducted some sort of training. I basically helped existing franchisees in the recruitment of others.

Q These meetings you just mentioned, would you please explain those?

A Well, these were the meetings that were used to introduce people into the business.

Q Would you please tell the Court how you were paid while you were associated with Koskott?

A I was paid a percentage. I believe it was a half percent, a half of one percent of the volume of franchise sales for the Borough of Manhattan.

Q Did you know Mr. Kirsch --

THE COURT: When you say "franchise sales," do you mean sales of franchises?

THE WITNESS: Yes, your Honor.

THE COURT: Do you see a difference?

THE WITNESS: Yes.

THE COURT: All right.

Q Did you know the defendant Donald Kirsch while you were in Koskott?

A I knew of him and I had met him once or twice, yes.

Q Did you know of the defendant Arthur Shevack while you were in Koskott?

A Yes, I did.

Q Was Mr. Shevack also in Koskitt?

A Yes, he was.

Q What was his position in Koskott, if you know?

A I believe he was the Assistant State Director for Brooklyn, a similar position to mine except his area was Brooklyn.

Q Now, Mr. Lieberman,who were the officers of Galax in September 1971?

A Mr. Rosenthal, myself, and Mr. Avni.

Q Could you tell us what their positions were, please?

(Continued on the next page.)

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THE COURT: Did you say in addition to knowing Shevack you also knew Kirsch?

THE WITNESS: Yes.

THE COURT: As in Koskot?

THE WITNESS: Yes.

Q Would you give us the positions, please, of those three people you just mentioned?

A Yes, Mr. Rosenthal was president and chairman of the board; Mr. Avni was vice president and I was secretary-treasurer.

Q Did these individuals hold any other positions in Galaxie?

A They were directors.

Q They were directors of Galaxie?

A That's correct.

Q Now, Mr. Lieberman, did Galaxie have an executive board?

A Yes, it did.

Q Would you please tell the Court what that executive board was?

A Yes. The executive board was composed of, I believe at first, six executive vice presidents. They were the policy making arm of the company. The board was composed totally of nine people: myself, Mr. Rosenthal,

Mr. Avni and six executive vice presidents.

Q Who were the six executive vice presidents?

A Mr. Rosenbach, Mr. Kirsch, Mr. Celano, Mr. Hurwitz, Mr. Katz -- I believe that's all of them.

THE COURT: That's five. How about Roth?

THE WITNESS: Mr. Roth was not in initially.

THE COURT: Mr. Glazer?

THE WITNESS: Mr. Glazer was never on it.

THE COURT: Badilla?

THE WITNESS: No. I could be mistaken. Maybe there were eight.

THE COURT: Let's see. It was six executive v.p's and the three you just mentioned, namely -- How about Shevack? Was he --

THE WITNESS: He wasn't even in the company then.

THE COURT: It was Rosenthal, Avni and yourself, plus these six?

THE WITNESS: I think I mentioned five; is that correct?

THE COURT: Plus the five. I'm sorry.

THE WITNESS: Yes. Mr. Katz's position at the time was -- Yes, Mr. Hurwitz's position at the time was president of the executive board. He was not an executive vice president, he was president of the

executive board.

THE COURT: He was president of the executive board?

THE WITNESS: That's correct.

MR. GARMANSKY: Your Honor, at this time I'd like to mark as Plaintiff's Exhibit 11 for identification, it is a manual, brown cover, it is titled "It's Your Move. Galaxie Foods, Inc. Marketing Concept, Distributors Guide."

THE CLERK: So marked, Plaintiff's Exhibit 11 for identification.

(So marked)

BY MR. GARMANSKY:

Q I'd like to show you what has been marked as Plaintiff's Exhibit 11. Do you recognize it?

A Yes, I do.

Q I have opened up to approximately the fifth page. These pages are in plastic covers. On that fifth page, Mr. Lieberman, there appears to be an organizaitonal chart; is that correct?

A That's correct.

Q Now, Mr. Lieberman, do you see the defendant Kirsch's name on that organizational chart?

A Yes, I do.

Q What is his title?

A Executive vice president, marketing.

Q Mr. Lieberman, would you explain how that specific title was chosen, executive vice president?

A Yes. When the directors of the corporation whom I have already identified first set up the corporation they realized that there would be many varied fields that had to be thoroughly explored and managed, so as per our initial agreement with certain individuals, we set up an executive board. This board was simply to control each of these various fields.

Mr. Kirsch had some background, as I understood it, in supermarket purchasing, so he was put in charge of that position and given the title of executive vice president for marketing.

Q Did the other members of the executive board have that word "executive" before their title?

A Yes, they did.

Q Did everyone?

A With the exception of myself, Mr. Avni, and Mr. Hurwitz, and Mr. Rosenthal, who were members of the executive board.

Q Now, was Mr. Kirsch a member of the executive board?

A Yes, he was.

Q Whom did Mr. Kirsch report to directly?

A The president of the executive board, Mr. Katz. We are talking about initially, or course?

Q Yes.

A Then it was Mr. Hurwitz, initially.

Q Did Galaxie Foods have other titles for individuals without that first word, "executive" in front of it?

A Yes. There was a vice president in the initial start. He was not on the executive board. It was Mr. Marinaccio. He reported to Mr. Celano. Later on there was a vice president in charge of retail sales who again was no on the executive board.

Q In other words, Mr. Lieberman, only the people who had the word "executive" before their title would be members of the executive board?

A Plus the three corporate officials.

Q Were the members of the executive board also directors of Galaxy?

A Only three of them were.

Q Name those three again for me, please.

A Myself, Mr. Avni, and Mr. Rosenthal.

Q Mr. Lieberman, did you consider Mr. Kirsch as

holding a supervisory position?

A Yes.

Q Would you please elaborate for us what Mr. Kirsch's specific duties were in that position of executive vice president of marketing?

A Yes. His duties were to establish the catalog, to order all the food, to maintain the levels that he had decided were necessary, after exploration we found were necessary.

He worked in cooperation with the warehousing people, worked in cooperation with the trucking people. Directly, I'm talking about, of course.

Q Now, Mr. Lieberman, besides yourself, Mr. Kirsch and Mr. Shevack, who else had been associated with Koskott that was in Galaxie at this particular time?

A Mr. Avni, Mr. Rosenthal, Mr. Katz, Mr. Celano, Mr. Rosenbach. You said besides Mr. Kirsch?

Q Yes.

A Mr. Marinaccio and other individuals who did not hold positions.

THE COURT: Did you include Hurwitz?

THE WITNESS: No, I did not.

THE COURT: Rosenbach, Kirsch, Celano, Katz, Marinaccio --

THE WITNESS: That's correct.

THE COURT: And then --

THE WITNESS: And other individuals who did not hold positions.

Q Was Mr. Hurwitz in Koskot?

A He was a partner in a distributorship, but he was never registered with the company.

Q Did you know all these people while you were in Koskot?

A Not all, no.

Q Who didn't you know from Koskot?

A Well, I had met Mr. Marinaccio once and said hello, was introduced but -- as I understand the definition of "know," I mean I didn't know anything about -- all I did, I had seen them perhaps at opportunity presentations and said hello. We said hello to everybody there.

Q Who else besides Mr. Marinaccio didn't you know?

A I said hello to Mr. Kirsch on occasions, but I didn't really know him either. Mr. Avni and Mr. Rosenthal introduced me to him subsequent to his coming into Galaxie.

Q How did the individuals you have just mentioned come to be associated with Galaxie?

A Well, when Galaxie was first started, we realized that to establish the type of sales force that we

wanted to either sell franchises, but particularly to get us moving very quickly, we would need a group of people not only who were good salesmen but who had specific abilities in different fields.

So they were approached by either or all of the three directors at the time to work with us in Galaxie. We approached, I believe, originally twenty-two individuals; sixteen accepted.

Q Mr. Lieberman, did you utilize anything that you learned in Koskott in order to set up Galaxie?

A Well, certainly the sales ability that we had used. We knew about the distributorships as far as non-territorial distributorships and we used that. Our training was intense, and we realized that that might be helpful to formulate training. I can't think of anything offhand besides that.

Q But the meetings, Mr. Lieberman --

A Right. Then I would amend that. We also used Opportunities presentations, which we knew were effective in Koskott.

Q Did you also use a similar commission structure?

A It was similar in many ways, but dissimilar in others.

Q Was it similar in the fact that a person could

earn a commission by recruiting others into the company?

A Yes. it was.

Q Mr. Lieberman, pertaining to Galaxie, could you please tell us what the franchises that Galaxie was offering for sale and selling were called?

A There were two positions. One was called the field manager, the other was called a distributor.

Q Would you please explain the distinction?

A Yes. Field manager paid a lower fee to come into the company. In turn, he received lower commissions both on the bringing in of new people and on the retail sales.

Distributor paid a higher fee, received greater commissions.

Q What were the prices of each, the field manager and the distributor, at various intervals in time?

A The field manager paid either one, two or three thousand dollars to come into the business.

The distributor paid three, five or seven. They were always linked up. When the field manager was one, the distributor was three.

Q Can you give us that time period?

A Well, initially, from September '71 to, I believe, it was March when we acquired the warehouse, the first price

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existed.

Q In March of '72?

A Yes. Did I say '71? Sorry. One and three. Then in March of '72 it went to two and five thousand dollars. And then I believe in October of '72 it went to three and $7,000, and subsequently we dropped the field manager position in August of 1973, and just had a distributor's position for $7,000.

Q Mr. Lieberman, did Galaxie ever represent these interests, the field manager and distributorship, as investments?

A Yes.

(Continued on the next page.)

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DIRECT EXAMINATION

BY MR. GARMANSKY (Cont'd):

Q Mr. Lieberman, did you own a distributor investment in Galaxy?

A Yes, I did.

Q How did you receive your distributor position?

A The directors awarded me one.

Q Who else from the defendants received a distributor position in Galaxy as an award or free of charge?

A Mr. Horowitz, Mr. Kirsch, Mr. Katz -- I think that's all there were.

Q Mr. Avni?

A Mr. Avni, I'm sorry.

Q Now, how did you in particular earn money while you were associated with Galaxy?

A I was paid in a manner similar to Mr. Kirsch, I was paid a percentage of the gross sales on wholesale.

Q Wholesale, you are referring to specifically the sale of francises only?

A That's correct.

Q In other words, depending on how much franchises had been sold, you would receive a percentage from the gross dollar figure?

A That's correct.

Q What was that percentage, Mr. Lieberman?

A It varies between three and four per cent.

Q Who else received three to four per cent?

A Everybody on the executive board and up, initially. Three or four per cent -- I'm sorry, just three people initially. There was myself, Mr. Avni and Mr. Rosenthal. Eventually Mr. Horowitz also received three to four per cent when he became a corporate officer and director.

Q That was because Mr. Rosenthal left in June of 1972?

A That's correct.

THE COURT: Do I understand that you are amending your answer that the three to four per cent was received only by the officers and Horowitz?

THE WITNESS: It was received only by the directors, your Honor, that's what I'm saying. Three to --

THE COURT: That's what I thought you said the first time, but something you said led me to believe --

THE WITNESS: Corporate officers and directors at that time were the same things.

MR. GOIDEL: May we have the time fixed, your Honor?

THE COURT: All right. Do you have a time period on that, that we are talking about?

THE WITNESS: Yes. The three to four per cent was paid to the directors or export -- the four gentlemen that I mentioned, three of them it was paid until -- I was paid, for instance, the entire amount of time between three and four per cent from September, 1971, the time of incorporation, until the demise of the corporation, let's say September of 1973.

I was continuously paid that, as was Mr. Avni. Mr. Rosenthal was paid until he left in June of 1972, at which time Mr. Horowitz, who was then receiving a lesser percentage, was made a director and was put on the same level as Mr. Avni and myself, and he did that until he resigned on or about March of 1973.

BY MR. GARMANSKY:

Q Now, did any other defendants receive this percentage commission as a salary?

A This percentage, you mean three to four per cent?

Q A percentage, some percentage figure.

A Yes. Mr. Horowitz did prior to his becoming a corporate officer receive a lesser percentage. Mr. Katz did, Mr. Roth did, Mr. Kirsch did, Mr. Padilla didn't -- did I miss any defendants?

Q Mr. Katz?

A Mr. Katz, I said he did.

Q Mr. Roth?

A Mr. Roth --

THE COURT: Glazer?

THE WITNESS: Mr. Glazer, I believe, received one-half of one per cent for one month.

Q Now, Mr. Lieberman, what was the percentage paid on an individual's investment in Galaxy as a commission to his sponsor?

Q Initially it was approximately 40 per cent -- I believe it was exactly 40 per cent, but after March I believe we dropped it down to 35 per cent, of '72 I'm talking about, I believe we dropped it down to 35 per cent. But it was always between 35 and 40 per cent paid to the sponsoring franchisee.

Q As the commission for the recruitment of that particular investor; is that correct?

A That's correct.

Q Now, approximately how much was being paid to the corporate officers of Galaxy as their commission in lieu of a salary?

A You are talking about total?

Q Total --

MR. GOIDEL: May I have that question read back?

(Question read.)

MR. GOIDEL: There is no testimony to my knowledge that any commission was paid in lieu of salary.

MR. GARMANSKY: By that I mean not a particular set salary a week, a hundred, a hundred and twenty-five. It was keyed into the gross sale of franchises which varied from week to week or month to month.

So therefore it would be in lieu of a salary as we know the definition, meaning a set price figure.

I will rephrase the question.

THE COURT: I think there is some confusion about it. I thought the witness just testified that 35 per cent of the commission was paid to the sponsoring franchisee.

MR. GARMANSKY: 35 to 40 per cent, that's correct, your Honor.

THE COURT: Where did the balance go?

MR. GARMANSKY: I'm leading up to it.

THE COURT: I see.

BY MR. GARMANSKY:

Q Mr. Lieberman, what was the gross percentage from the sales of franchises paid to the corporate officers of Galaxy?

A You are talking about overrides as distinguished

from -- we call them overrides, in other words, distinguishing them from the money paid to distributors.

Q Mr. Lieberman, listen to my question:

What was the total percentage from the gross sale of franchises paid to the corporate officers of Galaxy?

MR. GOIDEL: Objection, your Honor. The best evidence are corporate records.

THE COURT: It's a good boejction.

MR. GARMANSKY: What?

MR. GOIDEL: The best evidence are the corporate records and not his memory.

MR. GARMANSKY: Your Honor, this is a very high executive in Galaxy Foods.

MR. GOIDEL: I don't care --

THE COURT: He's entitled, as I see it, to have the facts that are recorded. The recordings may or may not correspond. That's not infrequently the case in litigation.

MR. GARMANSKY: Your Honor, I'm trying to ascertain the --

THE COURT: There must be corporate records available, your Honor. I'm trying to ascertain a percentage figure. The books and records will only show "X" number of dollars, they won't show the

percentage --

MR. GOIDEL: Of course they will.

MR. GARMANSKY: How can you make such a statement, Mr. Goidel?

MR. GOIDEL: They show the figures, they show the percentages.

MR. GARMANSKY: Your Honor, we don't have the books and records here anyway, and I believe the witness has this information within his own knowledge.

MR. GOIDEL: Your Honor, the fact that the Securities and Exchange Commission does not have the books in Court today does not excuse them from the rules of evidence.

THE COURT: You are confronted with the best evidence rule. It is still a settled rule in New York.

MR. GARMANSKY: Your Honor, the witness has testified that certain individuals received a percentage of all gross sales of franchises. I am now asking that individual if it is in his knowledge to testify, or to add up that percentage figure.

If there were 10 individuals who received one per cent each, that's 10 per cent from the gross sales value of franchises were paid to corporate officers.

That's all I'm doing. It follows logically,

and the books and records do not necessarily reflect this. This is within the witness's own knowledge.

MR. GOIDEL: Your Honor, the mere fact that this witness would add up 10 figures in his mind and give a figure does not establish the best evidence. He could be in error, he could be correct. I'm not challenging -- he's asked to state a fact and the best evidence to state that fact are the corporate records.

THE COURT: Yes. You had previously elicited from this witness testimony that he was paid a per cent of gross sales on wholesale, meaning, I take it, the receipts received from the sale of franchises; right? Which varied between three and four per cent.

MR. GARMANSKY: That's correct.

THE COURT: If this witness received between three and four per cent, how many other officers or executives received the same?

If you want to add those figures up, all right. You are talking about percentages.

MR. GARMANSKY: Your Honor, let me go about it in a different way. I will ask the witness if this information is on the books and records, which I don't believe it is. They didn't put this information on

it, that Mr. Jones receives one per cent.

The information that went on the books and records are the cash disbursement, Mr. Jones was paid $1,200. You would then have to find out what the previous sales were to get the percentage figure. So the books and records are no help here, your Honor, it's only within the witness's mind, this particular information that the payroll clerk had or someone had, but it is not on the books and records as a percentage.

Cash disbursements journal --

THE COURT: If I correctly understand the testimony he previously gave, as I've just mentioned it: Did each of the officers receive the same percentage?

THE WITNESS: No, your Honor, they didn't.

THE COURT: You mean they differed?

THE WITNESS: Yes, they did.

THE COURT: Do you know that of your own knowledge?

THE WITNESS: Yes, I do.

THE COURT: I'll permit him to state that. But I will request the Commission to have those corporate records in Court for purposes of any cross-examination by Mr. Goidel.

MR. GOIDEL: Thank you, your Honor.

MR. GARMANSKY: Very happy. What books would Mr. Goidel like?

MR. GOIDEL: All of the financial records of this corporation that would reflect the receipt of monies by any of the named defendants.

THE COURT: Which are in the custody of the Commission.

MR. GOIDEL: Yes, sir.

BY MR. GARMANSKY:

Q Mr. Lieberman, just to recap: Yourself, Mr. Avni, Mr. Rosenthal, up until June of '72, then Mr. Horowitz, each received three to four per cent from all gross sales of franchisees?

A That's correct.

Q How much did Mr. Kirsch receive?

A I believe he received one-half of one per cent.

MR. GOIDEL: Objection, your Honor. We are not interested in what he believes. He either knows or he states that he does not know.

MR. GARMANSKY: Your Honor, that's subject, if he wants, to cross-examination. That is the witness's best recollection.

I believe it is this. Mr. Goidel is now just, you know, arbitrarily putting words in the witness's

mouth that he wants to hear. This is the witness's testimony.

MR. GOIDEL: Your Honor, the witness --

THE COURT: I think Mr. Goidel is right to this extent, a witness either knows something or he doesn't know it. There is no way in which that can be sliced down to permit specculation to creep into a record. That's the vice of it.

If a decision is to be rendered in a case it has to be based on something more solid than speculation, conjecture or surmise.

If the witness knows as a fact, he may testify to it. If he doesn't known as a fact, then he had better tell the truth and say he doesn't know.

MR. GARMANSKY: Would you like the question read back, Mr. Lieberman?

THE WITNESS: Yes, I would.

THE COURT: That's one of the purposes of an oath, to make sure that when a witness testifies he testifies to the truth and not to something that he conjures up out of his own mind.

Let's have what Mr. Lieberman knows.

BY MR. GARMANSKY:

Q Mr. Lieberman, do you know what percentage

Mr. Kirsch received?

A Yes, I do.

Q What is that percentage?

A He received one-half of one per cent up until a point in time which I don't know, and then he received one per cent. But it was always between one-half of one per cent and one per cent.

Q How about Mr. Katz?

A He received one per cent at the beginning and then -- I'm not sure exactly how high it went, it might have gone as high as two per cent but --

Q Is that your best recollection, up to two per cent?

A Right, I believe it went as high as two per cent.

Q How about Mr. Roth?

A Mr. Roth started at one-half of one per cent and I believe he ended at one and a half per cent.

Q How about -- did Mr. Glazer receive these commissions from the gross sales?

A I believe it was only on one month as I stated before, I believe he received one-half of one per cent for one month.

Q Did Mr. Padilla receive these commissions?

A Mr. Padilla never received these commissions.

Q Now, Mr. Lieberman, if you know, what was the total percentage paid to the corporate officers of Galaxy from the gross sales of franchises?

A At one point in time we -- by "we" I mean the directors of the corporation, added up the percentages and we found that it was 18 per cent.

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DIRECT EXAMINATION

BY MR. GARMANSKY (Cont'd):

MR. GOIDEL: Your Honor, may we ask that that time be fixed and that he specify what directors made that addition?

Q What was the time period, Mr. Lieberman?

A The time period was in -- it was March of 1972 and the directors that made the addition were Rosenthal, Avni and myself, since we were the only ones that were in a position to know what everybody was earning.

Q Mr. Lieberman, was there a decision by the board of directors as to which people would receive these percentage commissions from the gross sale of franchises?

A Yes.

Q Who were those individuals who made this decision?

A The same three gentlemen I just named: Mr. Avni, Mr. Rosenthal and myself.

Q Mr. Lieberman, would it be fair to state that of every dollar that came into Galaxy, approximately 53 to 58 per cent of every dollar went out for the commission to the sponsor and as commissions to the corporate officers of Galaxy?

MR. GOIDEL: Objection, your Honor. For what

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period of time?

THE COURT: All right. You may answer the question but try to give the time. Let me hear the question.

(Question read.)

THE WITNESS: Yes, it would be fair to state that an -- your Honor asked for a period of time?

THE COURT: Yes. A period or point of time over which this --

THE WITNESS: I would have to say that those figures remained from September, 1971, until the demise of Galaxy Foods.

BY MR. GARMANSKY:

Q Mr. Lieberman, would it be fair to say that the only source of income for Galaxy was the sale of the franchises?

A We are talking about the entire time?

Q Yes.

A No, that would not be fair to state.

Q Other than the pilot program, that retail program?

A Yes, it would be fair to state that.

Q Now, Mr. Lieberman, did Galaxy hold any meetings?

A Yes, it did.

Q Could you please list the meetings for the Court?

A They were opportunity meetings, Sunday step-up meetings and, I guess you could call it, training session meetings.

Q Are you familiar with each of these meetings?

A Yes, I am.

Q Would you please describe the format of each meeting?

A Well, the opportunity meeting was merely an introduction of prospective francisees to the marketing plan, as we knew it, the entire surrounding -- the entire business plan of the company.

The Sunday step-up meeting was a refamiliarization, a tour of the wrehouse, the term we used in sale is a closing meeting, to try to attempt to close the sale.

The training sessions were basic business management training for all people who had invested in Galaxy.

Q Where were the opportunity meetings held?

A At various locations, hotels, meeting rooms in and around the City of New York.

Q How frequently were these opportunity meetings held?

A Generally three times a week, although there were periods of time when they were four times a week.

Q How many people attended the opportunity meetings?

A It varied. We had meetings where we had 20 people, 10 people; we had meetings where we had 200 people.

Q Where were the Sunday step-up meetings held?

A After March of 1972 there were almost -- they were almost alwaysheld in the warehouse. Prior to that I believe they were held at 1864 Flatbush Avenue, which was the office that we maintained.

Q How frequently were these Sunday step-up meetings held?

A I believe we only missed one Sunday in the two years we were in business.

Q You held them every Sunday except for one?

A I think there was a holiday. We had it on Saturday.

Q How many people would attend the Sunday step-up meetings?

A Again, it varied between 20 and 200, although in fairness I'd have to state that I think there were more people there on the Sunday than the average meeting of the preceding week, because it was generally people that had been

down to meetings during the week.

Q When you testify as to how many people attended these meetings, in the figure you are including guests, prospective investors and existing investors, field managers and distributors?

A Yes.

Q Now, Mr. Lieberman, do you know how prospective investors came to attend the opportunity meetings and/or Sunday step-up meetings?

MR. GOIDEL: Your Honor, I am going to object now to the broad generalizations.

If they have particular persons that they are considering, let him name the person, name the meeting and so forth.

If I must conduct a cross-examination, I must have specifics and not generalizations.

MR. GARMANSKY: Your Honor, the witness has testified that meetings were held, that prospective investors were there. These meetings were held three, four times a week for two years.

I don't think it is fair nor is it obligatory on my part to lay out the exact time, the date on which people attended.

MR. GOIDEL: If my clients, either Messrs. Shevack

or Kirsch, are going to be accused of participating in any wrongdoing relating to any individual, I have a right to know the name of the individual, where the act was supposedly committed, and where it was supposedly committed.

MR. GARMANSKY: The question does not state that Mr. Goidel's clients did anything wrong.

I am simply asking Mr. Lieberman if he knows how the prospective investors came to attend these meetings.

It has nothing to do with Mr. Goidel's clients.

MR. GOIDEL: Will you make that concession on the record? I'll have no objection.

MR. GARMANSKY: The question itself per se does not name your clients in there, but it is part of the record and it goes to our evidence.

MR. GARMANSKY: If I may now be heard?

The complaint in this action and everything else that has ever been said in connection with this action has been said in such broad and general terms that no one could possibly or conceivably determine which of the defendants they are talking about. They try to impute from the act of an individual conduct to another individual, simply by this broad

generalization engaged in all of the time.

If they are going to charge that any of these remarks made now by this witness will be binding upon my clients as having acted in a particular way or done a particular thing or brought individuals down to a particular meeting, then I wish them to specify it.

THE COURT: There is some merit to that objection, Mr. Garmansky. To this extent, Mr. Garmansky, granted that this man has been described as the top officer, probably a founding member of Galaxy Foods, incorporating doesn't automatically confer omniscience upon him.

What we are interested in here is knowing, for example, if you want to inquire as to how, if he did, solicit or introduce or otherwise induce or invite people to come to these meetings, you can start off on that square first.

If he talked to various prospects and found out how they happened to be there, that's something else again, but then we want to get some specifics. Does he know the person he spoke to or did he get his name, and that sort of thing.

That, at least, gives Mr. Goidel an opportunity

to cross-examine or possibly to find out whether certain persons who were said to be at these meetings and said certain things are vailable to him as witnesses.

So you have to bear those practical aspects for these rules in mind.

MR. GARMANSKY: Let me withdraw the question, your Honor.

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Q Mr. Lieberman, approximately how many Sunday Step-up Meetings did you attend in your association with Galaxy?

A I attended every single Sunday Step-up Meeting.

Q That would be for approximately two years?

A That's correct.

Q Over 100?

A That's correct.

Q Tell us how many Opportunity Meetings you attended, Mr. Lieberman.

A I would say between 50 and 75. About 25 per cent of them. I wasn't at all the Opportunity Meetings.

Q About 25 per cent?

A Yes.

Q Mr. Lieberman, at these Opportunity and Sunday Step-up Meetings did you ever have guests present?

A Yes.

Q Did you consider these guest perspective investors in Galaxy?

A Yes.

Q Now, Mr. Lieberman, did you ever bring any guests to these meetings, either Opportunity or Sunday Step-up?

A Yes.

Q Would you please explain to the Court how your guests came to attend these meetings, very briefly.

A I met them some place in some other dis-related functions or whatever it might be, and I told them about our business and I asked -- I invited them to come down and take a look at what we were showing.

Q Mr. Lieberman, do you know whether or not other existing investors in Galaxy were doing the same or similar things as you were doing, that is, inviting guests down to attend a meeting?

A Yes, I do know.

Q Mr. Lieberman, would you please tell us -- strike that. Mr. Lieberman, was it the routine practice to have all guests being invited to these meetings, Opportunity and Sunday Step-up?

A Yes. As a matter of fact, they couldn't come unless they were invited.

Q Who did they have to be invited by, Mr. Lieberman?

A An existing franchisee.

Q Thank you. Mr. Lieberman, I would like to now show you Plaintiff's Exhibit 6, Plaintiff's Exhibit 5, Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4. Do you recall those pamphlets?

A Yes, I do.

Q Mr. Lieberman, can you tell us which of those documents came first?

A This one.

THE COURT: What one is that?

THE WITNESS: This is Plaintiff's Exhibit 6.

Q Now Mr. Lieberman, who prepared Plaintiff's Exhibit 6?

A Myself and Kenneth T. Rosenthal.

Q Anybody else?

A No.

Q What was the purpose of preparing Plaintiff's Exhibit 6?

THE COURT: By the way, is that in evidence?

MR. GARMANSKY: Yes, Plaintiff's Exhibit 6 is in evidence, as well as Plaintiff's Exhibit 5.

THE COURT: All right.

Q Mr. Lieberman, what was the purpose of preparing Plaintiff's Exhibit 6?

A There was a dual purpose: (1) it contained -- what I would characterize as a script of the marketing plan that was used -- to be used at the presentations that were discussed a few minutes ago and that is all. This was -- Plaintiff's Exhibit 6 did not contain the rules and

regulations of the company.

Q Were the documents that you were shown, Plaintiff's Exhibits 5, 6 and 3 and 4, were they given out to prospective investors in Galaxy?

A Yes, they were.

Q When were they given out?

A Prior to them entering the business.

Q Were they given out at Sunday Step-up Meetings?

A That's correct.

THE COURT: After they entered the business?

THE WITNESS: They were given out at Sunday Step-up Meetings prior to them entering the business, your Honor.

Q You have explained to us the preparations surrounding commission, Exhibit 6. Would you please explain how Plaintiff's Exhibit 5, Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4 were prepared?

A They were prepared by myself -- well, Plaintiff's Exhibit 5 was prepared by myself and Mr. Rosenthal and Mr. Avni and Mr. Katz and Mr. Horowitz -- Mr. Roth I don't believe was with us at this time, or not during preparation of this. Plaintiff's Exhibit 3 was prepared by the same people, with the addition of Mr. Roth, as was Plaintiff's Exhibit 4.

MR. GARMANSKY: Your Honor, I would like to offer into evidence Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4.

THE COURT: Is 5 already in?

THE CLERK: Five is in.

MR. GOIDEL: For the record I would simply state my objection. There has been no connection, certainly not by this witness, between documents that are now being offered by my clients. But to that end I will object.

THE COURT: I will overrule the objection.

THE CLERK: Plaintiff's Exhibits 3 and 4 now marked in evidence.

xxx

(So Marked.)

Q Mr. Lieberman, in what way were Plaintiff's Exhibits 3, 4, 5 and 6 used at the Opportunity Meetings?

A It was, I explained before, the first portion of the -- of each one of these exhibits describes in detail the marketing plan of Galaxy and includes what we called the board work, which is this thing which is handwritten and it was -- the first portion of it is basically a script that we used at every one of these meetings.

Q Mr. Lieberman, isn't it true that speakers

at Opportunity Meetings had to memorize the content of Plaintiff's Exhibits 3, 4, 5 and 6 dealing with the presentation?

A Yes, that is true.

Q Were any speakers at Opportunity Meetings allowed to vary or make their own speeches for presentation at those meetings?

A Yes. That was the guest speaker but other than that the people who did the business portion of the meeting rather than the -- what we would call the closing portion, the guest spot had to read from this. Only the guest speaker could vary.

Q Who was the guest speaker, Mr. Lieberman?

A It was always a person who was an executive or working in field operations, what we call field operations, the sale of franchises.

Q Mr. Lieberman, is it a matter of fact that the speakers who spoke at Opportunity Meetings were given a prepared speech by the Galaxy management so that Galaxy management could control the Opportunity Meetings?

MR. GOIDEL: Objection to the form of that question, your Honor.

THE COURT: Let me hear it.

(Read.)

THE COURT: I will overrule the objection.

You may answer.

THE WITNESS: Well, we did want to control what was said as far as the presenting of the business, so to that I would say yes.

Q Mr. Lieberman, did you speak at the Opportunity Meetings?

A Yes, I did.

Q Did you speak at the Sunday Step-up Meetings?

A Yes, I did.

Q Did any of the other defendants in this action speak at Opportunity Meetings and Sunday Step-up Meetings?

A Yes, they did.

Q Who?

A Mr. Horowitz, Mr. Roth, Mr. Katz -- everyone -- every other defendant with the exception, to my knowledge, of Arthur Shevack, spoke at Opportunity Meetings. Sunday Step-up Meetings, Mr. Padilla didn't, Mr. Kirsch didn't, and Mr. Shevack he didn't. Everybody else spoke at Sunday Step-up Meetings.

Q Mr. Lieberman, at the Opportunity Meetings you attended, were guests ever told by speakers they could earn $60,000 a year if they invested in Galaxy?

MR. GOIDEL: Objection, your Honor, unless we identify who it is that supposedly made this statement.

THE COURT: I will sustain the objection.

You may ask this witness if he ever heard that statement made and could he identify the maker.

MR. GARMANSKY: I will rephrase the question, your Honor.

Q Mr. Lieberman, did you ever hear any speaker at Opportunity Meetings state to the guest that they could earn $60,000 a year if they invested in Galaxy?

A Yes.

Q Who did you hear make that statement?

A The person who was doing the third part of the meeting.

Q As reflected in Plaintiff's Exhibit 3, 4, 5 and 6?

A That's correct.

Q Specifically though, Mr. Lieberman, who did you hear make that statement?

A Well, it was whoever did that. There were so many people who did it. There were always distributors.

Q From your own recollection, Mr. Lieberman,

who did you hear make the statement?

A I couldn't answer that question, specifically. I could say that -- whoever put on the third portion of the meeting did it. I am not sure -- if I said that, for instance, Mr. Smith said that, then I would have to be sure that Mr. Smith put on the third portion of the meeting. I couldn't be sure.

Q Did you ever hear Mr. Padilla make that statement?

A If he put on the third portion of the meeting, Mr. Garmansky, then he made the statement. I am not sure that he did.

Q Your best answer is that you don't recall whether or not Mr. Padilla said it?

A That's correct.

Q Now, Mr. Lieberman, do you know whether or not the figure of $60,000 was written on a blackboard?

A Yes, it was.

Q Isn't it also a fact, Mr. Lieberman, that when this figure of $60,000 was written and mentioned there would be loud cheering and applauding?

A There would be cheering and applauding, yes.

Q Did this cheering and applauding occur with regularity at the Opportunity Meetings you attended, when

this figure of $60,000 was mentioned?

A Yes, it did.

Q Did you ever know, Mr. Lieberman, from what source this cheering and applauding originated?

A It was always the people who were already in the business, the people who were franchisees already, existing franchisees.

Q Mr. Lieberman, do you know the purpose of this cheering and applauding in Opportunity Meetings?

MR. GOIDEL: Objection, your Honor, it calls for a conjecture and the operation of other peoples' minds.

THE COURT: I will sustain the objection. I will permit you to inquire whether the cheering and applauding was a technique developed in the booklets or developed as part of a predetermined plan and so forth; whether he participated in that.

Q Mr. Lieberman, you testified that you attended the meetings while you were associated with Koscot, is that correct?

A That's correct.

Q At those meetings you attended, Mr. Lieberman, was there cheering and applauding?

MR. GOIDEL: Objection your Honor. I fail to

see the revelancy now between Koscot and Galaxy's meetings.

MR. GARMANSKY: Your Honor, we have already established --

THE COURT: I don't think you have to go back to Koscot. I suggested you ask did this witness participate in any discussion in Galaxy concerning techniques to be used at these meetings.

Q Mr. Lieberman, did you have any discussions with anyone in Galaxy concerning those or techniques to be used at Opportunity Meetings?

A Yes, of course.

Q Mr. Lieberman, among those discussions did you ever talk about cheering and applauding at Opportunity Meetings?

A Yes, we did.

Q Mr. Lieberman, do you recall who you spoke with concerning cheering and applauding?

A The entire executive board of the company.

Q Do you recall who was present?

A Everybody that was on the executive board.

Q Can you tell us once more what -- strike that. Can you tell us what point in time this was?

A In the very beginning of the company, in

12 Mr. Lieberman-direct

September, October, November.

THE COURT: Who said it?

THE WITNESS: We decided against any cheering or applauding at Opportunity Meetings in the beginning because we felt that we didn't want to have a Koscot-like attitude. We had just been through that and we knew what was going on, and so the discussion in the executive board at that time was that there would be absolutely no wildness, it was going to be a very business-like session.

THE COURT: Was the subject discussed at a later time in which there was a change of viewpoint about it?

THE WITNESS: Not by us, your Honor, but apparently it came about at an association meeting that they wanted to put in a great deal of enthusiasm into the meetings.

THE COURT: What do you mean by association meetings?

THE WITNESS: Well, for instance, in one of the Plaintiff's Exhibits, the first one that I can find will have it, Exhibit 5, there is toward the back of the book a suggestion for setting up a distributor's association, that is a group of -- definition,"the

association is a group of distributors and field managers in a given area acting in a voluntary cooperative effort to participate in the sharing of recruiting costs." This association ran the meetings. They paid for it. They did the first three parts, that is why I testified before I couldn't exactly say who did it all, and they -- they made an address code for the meetings. The only thing that we did insist on is that they stay with the script as we had written it, but they apparently had come to a decision that they wanted to put more enthusiasm into the meeting.

Q Mr. Lieberman, did the executive board hold any meetings concerning this injection of new entnusiasm at the meetings?

A We discussed it at one of the meetings after we had learned it was occurring.

Q Who was present at this discussion of the executive board?

A Everybody that was on the executive board.

Q Was Mr. Kirsch present?

A Yes.

Q You were present?

A Yes.

Q Mr. Avni?

A Yes.

Q Mr. Katz?

A Yes.

Q Mr. Roth?

A Yes.

Q Was Mr. Rosenthal still in the company?

A No, he was not.

Q Mr. Glazer?

A No, he was never on the executive board.

Q What was discussed at this executive board meeting concerning this enthusiasm at the Opportunity Meeting

A That was what was discussed, the enthusiasm; what was going on, the cheering and applauding.

Q What was the decision, if any, reached by the executive board?

A The decision was to leave it alone.

Q And to allow it to continue?

A That's correct.

THE COURT: Not to interfere, in other words?

THE WITNESS: That's correct.

Q Mr. Lieberman, during this discussion of the executive board, was there any discussion of the purpose of this cheering and applauding?

A Yes.

Q Please tell the Court what was discussed concerning that aspect?

A Well, we wanted to know whether it would aid or hurt the sale of the franchise at these meetings. We discussed it and I believe that we all reached the conclusion that it certainly couldn't hurt unless it got out of hand, and it was more polite at the time -- at that particular time it was -- there was no ranting or standing on chairs as there was at other Koscot meetings or something like that, so it was very polite so we decided to let it stay in.

Q What was the purpose of this cheering and applauding, according to the executive committee?

A We felt that it would certainly promote enthusiasm among everybody at the meeting and help sell our franchise.

Q Isn't it true that cheering and applauding was allowed as an inducement to get prospective investors to invest in Galaxy as another sales tool?

MR. GOIDEL: Objection to the form, your Honor.

THE COURT: I have to say that I think this is a good example of a leading question that wouldn't

be permitted in the relationship that I see this witness to you, Mr. Garmansky, he is not hostile by any means and putting words in his mouth is not going to help me decide issues of fact here, I can tell you that. You want to get back on the track and ask him whether the discussions got down -- surely, he has already said they discussed it as to whether it would aid or hurt their efforts and they concluded that it couldn't hurt. You want to take him further than that? We better have some discussion, not his conclusion.

MR. GARMANSKY: Thank you, your Honor, I withdraw the question.

Q Was there any discussion, Mr. Lieberman, concerning how the cheering and applauding would aid Galaxy?

A Oh, yes.

Q What was discussed?

A Well, we discussed that it might help generate enthusiasm amongst the other -- amongst the new people, the guests and that it certainly might help us sell the franchises. The term that I heard before "sales tool" that would be a fair term, yes, they could use that as a sales tool, and it couldn't hurt the sales of our

franchises.

Q Mr. Lieberman, you testified that Galaxy held training sessions for new investors, is that correct?

A That's correct.

Q Concerning these training sessions, were the new investors taught anything concerning enthusiasm at these Opportunity Meetings?

A Yes, they were.

Q Please describe what they were taught.

A We told them, (1) that they should always applaud the new speakers coming up because we felt the new speakers were working for them in effect, they were putting on a presentation and saving them the trouble of doing it. We felt that they ought to laugh at jokes, be sure to laugh at jokes, just show general enthusiasm at the meetings and be happy with the new business advantages.

Q Was this figure of $60,000 a year used at the Opportunity Meetings used in the manuals marked Plaintiff's Exhibits 3, 4, 5 and 6?

MR. GOIDEL: I should imagine that the documents will speak for themselves.

THE COURT: It might be helpful if they so speak to have it stated in the record.

THE WITNESS: It is not used in the manual

Plaintiff's Exhibit 6. There is no figure of $60,000 here, which was the first manual that we used. It is used in Plaintiff's Exhibit 4.

Q At what page, Mr. Lieberman?

A I don't see it on the board -- it is not on here, it should be, it is on page 8.

THE COURT: That is Plaintiff's Exhibit 4, page 8.

THE WITNESS: Yes. Again, it is not on the board work, but it is on page 8, also of Plaintiff's Exhibit 3. I don't see it in Plaintiff's Exhibit 5 either. It is not in 5 and 6, and it is in 3 and 4. These are the first two manuals.

Q Mr Lieberman, at the Opportunity Meetings you attended, were there any announcements made or of the new guests or guest joining Galaxy?

A Yes, there were.

Q Would you please explain to the Court, what occurred.

A Well, if a guest or a new franchis· was purchased that evening or a person came in with a completed application and a check, we would call him up to the front of the room, announce his name, announce the position he was joining the company at and just to acquaint him with everybody

in the room.

Q Mr. Lieberman, when was the announcement made, at what point in the Opportunity Meeting was this announcement made?

A It was always made during the guest spot, during the last portion.

Q Did the guest speaker, who you testified about, was he a member of Galaxy management?

A That's correct.

Q Did the guest speaker know beforehand who intended to join Galaxy that evening?

A Yes. He was usually notified by the sponsoring franchisee that he had a new man coming into the business, and he would either show him the check or say the guy would be -- the person would be down with the check a little later on and soon as he came in he would just sort of hold it up during the guest spot and the guest speaker would say "we have a new field manager or distributor."

Q Would there be cheering and applauding at this announcement?

A Yes.

THE COURT: We will take a brief recess.

(Recess.)

(Continued on next page.)

DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

(Witness Lieberman resumes the stand.)

Q Mr. Lieberman, at the Sunday Step-up Meetings you attended, how many speakers would there be?

A One.

Q Who would this speaker usually be?

Strike that.

Who would the speaker always be?

A It was either myself, Mr. Katz, Mr. Horowitz, Mr. Roth. I don't remember any other speaker.

Q In other words, the speakers would only come from the management of Galaxy?

A That is correct.

Q Now, at the Sunday Step-up Meetings you attended, did there come a time when new guests were asked to stand up and comes to the front of the room?

A Yes.

Q Would you please describe what occurred with these guests when they were asked to come to the front of the room?

A Yes. All the guests in the room were asked to come to the front of the room. We would ask them their name, their present occupation, strike up a conversation, a

brief conversation with each guest; are they married, if their wife was there, if they had been to a meeting during the week, and then we would ask them what position they were going to be joining Galaxy in, what position suited them best, field manager or distributor.

Then after they gave their name and they answered that question, we gave them one of these exhibits, either -- which everyone of them was in effect -- I'm referring to the distributors business manuals --

Q Plaintiff's Exhibit 3, 4, 5 and 6?

A That's right, and then they were seated.

MR. GOIDEL: Your Honor, if I may just be heard for a moment.

I am not taking some objections that I feel I should take. Pursuant to your Honor's suggestion previously, perhaps it should best be left to cross-examination.

But under those circumstances I would need some rather wide latitude on cross-examination in order to disect and pinpoint specific times, dates and places, so rather than object, may I have the understanding that I will be given that latitude?

THE COURT: Yes, I will permit you the latitude.

MR. GOIDEL: Thank you very much.

THE COURT: It seems requisite.

BY MR. GARMANSKY:

Q Mr. Lieberman, during what time period did the situation just testified to take place?

A I believe the entire time that Galaxy was in operation that that particular procedure happened, from September '71 until the last Step-up meeting that I can recall.

THE COURT: What would be the last, that you recall?

THE WITNESS: I believe there was one or two in August of 1973, and that was it, your Honor.

Q Now, Mr. Lieberman, is it correct that each guest was asked what position he was coming in to Galaxy or what position suited him best?

A Or some paraphrasing of that, yes.

Q Would there be cheering and applauding if a new guest stated he was joining as a field manager or distributor?

A Yes.

Q Now, Mr. Lieberman, was this situation that you just testified to discussed at executive board meetings?

A Yes.

Q Would you please explain what was discussed concerning the new guest or the guests that came up to the

front of the room at the executive board meetings?

A Well, I have some ntoes on that somewhere around, but basically the procedures were discussed, that's it.

As I mentioned before, Mr. Karmansky, the cheering and applauding came regardless, but every other procedure was discussed, yes.

Q Now, Mr. Lieberman, would it be fair to say that when a speaker asked these guests that final question that they phrased it in such a way that they didn't leave the choice of whether or not the guest was coming in at to Galaxy but only as to what position he was going to join as?

MR. COIDEL: I'll object to the form of that question, your Honor.

THE COURT: It's a little bit involved.

MR. CARMANSKY: I withdraw the question, your Honor.

Q Mr. Liberman, were the new guests given a choice of joining Galaxy at all?

A You mean an oral choice, in your question?

Q Yes.

A No, they weren't. We assumed that they were going to join.

Q Now, when you received or when Galaxy received this commitment as to some of the guests, when they said yes, they were going to join as a field manager or distributor, was this commitment used in any particular way?

A By myself?

Q By anyone in Galaxy?

A Well, I would imagine that --

THE COURT: Just a minute. Remember what I said before, I can't allow imagination,however fertile, to creep into this case.

THE WITNESS: The distributors were instructed to the best of my knowledge, and that's fairly extensive --

MR. GOIDEL: I object and move to strike -- He's added "to the best of my knowledge,"again. Either it was or it wasn't.

THE COURT: That is not an unheard of expression in the law, "to the best of my knowledge."

MR. GOIDEL: That's true, your Honor, except the way the witness is intoning it here and using it, I think it means he's guessing.

THE COURT: You are indulging in a little conjecture here, I might add, Mr. Goidel, when you talk about the effect of intoning.

Let's see if we can get back on the track

here.

Would the Reporter read back the answer so far as it went.

(Record read.)

THE COURT: That part I'll strike and I will instruct myself to disregard it.

I'm not sure whether the answer was completed.

MR. GARMANSKY: It was not completed, your Honor.

THE COURT: "And that's fairly extensive" sounded like an aside.

THE WITNESS: May I --

THE COURT: You may answer, that's what we mean by being heard. What's the answer?

You started to say --

THE WITNESS: I started to say that the field managers and distributors who were already in the business were instructed, to the best of my knowledge, and my knowledge on that particular situation was fairly extensive, to follow up the guest -- in other words, to seek a check in the amount of the position that they said they would come in as.

In other words, if they said they were coming in as a field manager and a field manager investment

was $2000, they would then try to seek a $2000 check to get that person into the business as a field manager.

If it was 5000, as a distributor --

DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

Q This procedure at the Sunday Step-up Meetings was discussed by the executive board?

A Definitely.

Q And it was approved by the executive board?

MR. GOIDEL: Objection. That's a conclusion. He may ask what they did at the executive board with regard to it.

Q What action, if any, did the executive board take on this particular situation that was discussed?

A We had a discussion about it. Anybody with objections to it were asked to cite those objections. Anybody with changes of policy as far as the proposed plan were asked to state that, and then it was approved.

Q And to the best of your recollection, Mr. Lieberman, Mr. K irsch was present at these discussions of the executive board?

A Definitely.

Q Do you know whether or not, Mr.Lieberman,

Mr. Kirsch made any objections as to this procedure to be employed at Sunday Step-ip Meetings, concerning the getting commitments from the new guests?

A I don't remember.

Q Mr. Lieberman, would this particular procedure at Sunday Step-up Meetings of getting this commitment from the guest, was the purpose discussed at the executive board meetings?

A Yes.

Q Please tell us what those discussions were.

MR. GOIDEL: Your Honor, I have no objection as long as he fixes a time.

THE COURT: All right.

Do your best to do that, Mr. Liberman.

THE WITNESS: Yes, your Honor. We are talking about approximately the same time that I mentioned before; I believe it was June of 1972. It was possibly June or July. It was right after Mr. Rosenthal had left that the enthusiasm of the meetings had come back and also at that time when we started a rather extensive sales campaign on franchises.

BY MR. GARMANSKY:

Q Mr. Lieberman, will you stay with the particular question: What was discussed concerning the purpose of using

the commitment device at the Sunday Step-up Meetings?

A Again, the purpose was to try to get a closing sign or a closing of the sale made as a sales tool, in order to persuade people to join the company.

We figured it would be a "psychological tool"--perhaps is a bad word, but it would be a psychological inducement or a psychological persuasion.

Q Mr. Lieberman, at the Sunday Step-up Meetings you attended, did you ever see checks being handed out to existing investors?

A Yes.

Q Would you please explain what occurred?

MR. GOIDEL: And when, your Honor, if I may interject.

A I believe the checks -- well the checks were not handed out in the beginning, in September of '71. Or October, the very beginning of the program, simply because there just weren't enough of them to impress anybody.

But a little further on, I can only give my best estimate, it would be in the early part of 1972, we started at these -- at the Step-up presentations to do something that we call payday. It was when we paid the existing field managers and distributors for the previous week's franchise sales at the meetings, at the Sunday

Step-up Meetings, at the very end of the program.

Q Would you please tell us the details surrounding this payday aspect of the Sunday Step-up Meetings?

A Yes, it was very simple. We accumulated the checks for the week and brought them with us to the Sunday Step-up no matter where it was held and we called up the franchisees that had earned commissions, announced their name, asked them how long they had been in the business, what they did before they came into the business to show -- well, you didn't ask me -- and then we gave them a check.

Q Was this done in front of the guests?

A Yes.

Q Now, was the --

THE COURT: These commission payments were for franchise sales, for wholesaling?

THE WITNESS: That's correct.

THE COURT: Not retailing?

THE WITNESS: That's correct, your Honor.

Q Were the amounts of the checks read off also?

A Yes.

Q Now, did the speakers, while calling the names and handing out the checks, make any comments?

A As I said, they generally asked, "What did you

do before you came in? How long have youbeen in?"

They might say, "Isn't that fantastic, he's been in the business only three weeks and this is his second check," or something like that.

Q Was there any cheering and applauding?

A Oh, yes.

I would call it more polite cheering and applauding, particularly from the people who had not earned any money that week.

Q Mr. Liberman, was this particular aspect of the Sunday Step-up Meeting, the handing out of the checks, ever discussed at executive board meetings?

A Meetings, no. Meeting, I believe we had a discussion about this, yes.

(continued next page.)

DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

Q You recall one meeting concerning this aspect.

Was Mr. Kirsch present?

A Yes -- so that we can clarify this, I don't remember any meetings except perhaps one of the executive board that Mr. Kirsch was not present.

Q Mr. Lieberman, do you recall Mr. Kirsch being present for this discussion of the handing out of checks at Sunday Step-up Meetings?

A Yes.

Q Thank you.

Please tell the Court what was discussed concerning these checks.

THE COURT: I'm not too clear in my own mind because he made reference to the executive board meeting. Youare talking about at the Sunday Step-up Meeting?

MR. GARMANSKY: Maybe I didn't finish a question and I will make it into a question.

Q Mr. Lieberman, what discussions occurred at the executive board meetings concerning the handing out of checks for Sunday Step-up Meetings?

A Just prior to the initiation of this policy we held an executive board -- in the executive board meeting, which we normally held one day a week, we had a discussion about handing out checks to existing distributors and field managers.

It was a rather brief discussion and there seemed to be an overwhelming approval to at least try it and it went on from that time on .

Q It was employed, as you stated, from approximately January 1972 to when?

A I don't think I said January, I said sometime around the time that Mr. Rosenthal left, around June of 1972 -- until, again, the last Step-up Meeting that I can remember.

Q Thank you.

Was the general purpose of using the handing out of these checks at the Sunday Step-up Meeting discussed at this executive board meeting?

A Yes, it was.

Q Please tell us what was discussed concerning that purpose?

A It was felt by the people that composed it, and I must admit myself, that it would demonstrate to the prospective franchisees who were still at that meeting,

the types or amounts of money that it was obviously possible to earn by the sales of franchises. And it was used again as a sales tool to attempt to persuade themto come into the business.

Q Mr. Lieberman, do you know whether or not any checks were ever paid out at meetings for the retail food sales?

A No.

MR. COIDEL: No, you don't know, or no, they weren't?

THE WITNESS: I'm sorry. Can I have the question?

(Record read.)

THE COURT: He doesn't know.

THE COURT: May I ask Mr. Garmansky to clarify the word "meetings" in this particular instance. You are talking about Step-up meetings, Mr. Garmansky ?

BY MR. GARMANSKY:

Q I will rephrase the question. At either Opportunity Meetings or Sunday Step-up Meetings where guests were present, were checks ever handed out for the retail end of Galaxy?

A No.

Q Now, Mr. Lieberman, you testified that Galaxy held training sessions for new investors; is that correct?

A That's correct.

Q Who set up these training sessions?

A Originally, I set up the training sessions.

Q Did anyone help you in setting up these training sessions?

A Yes, Mr. Avni and Mr. Rosenthal, but it was mainly my responsibility.

Q Now, were these training sessions held from the very beginning of Galaxy, that is September of '71?

A I believe the first one was in October of '71. We didn't have enough people in the business to run the school in September.

Q When did these training sessions end?

A I believe there were a few in July of '73. I don't believe there were any in August.

Q Where were these training sessions held, Mr. Lieberman, from the time periods that you gave us?

A Well, when we got our office, which I believe was October of November in '71, they were held there. They were held mostly at our office and at the warehouse and at meeting rooms that we arranged for when it would conflict with something else going on in the office or the warehouse.

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Q Were new investors required to attend these meetings?

A Yes. We had a stipulation in the agreement form that they must take training within 75 days or lose their eligibility for any commissions.

Q Mr. Lieberman, who were the instructors at these training sessions, during the time periods you mentioned?

A You want names?

Q Yes.

A Well, first of all, all of the members of the executive board at one time or another were instructors in training. Allthe defendants in this case were at one time or another an instructor of a formal training session, with the exception perhaps of Mr. Shevack who only taught at an association meeting, and he was not at our training session.

MR. GOIDEL: Your Honor, I move to strike everything after the word "Shevack" as being non-responsive to the question asked.

THE COURT: All right. I will grant the motion to strike that.

THE WITNESS: There were other instructors. If I can name a few. Thadius Stenson, Thomas Calder,

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Edgar Mendez, Joe Vega, Walter Martin. Those are the only ones I can recall, plus the ones I mentioned before.

BY MR. GARMANSKY:

Q Mr. Lieberman, to the best of your knowledge, did Mr. Shevack teach any concepts of Galaxy to anyone?

MR. GOIDEL: Note my objection, your Honor. It's a broad question, not specific, refers to --

MR. GARMANSKY: Withdraw the question, your Honor.

Q Mr. Lieberman, do you know whether or not Mr. Shevack acted as an instructor at any meeting?

MR. GOIDEL: Objection, your Honor, unless he establishes a foundation of this gentleman's presence at any meeting that is referred to.

THE COURT: He can ask him a question in that form, was he present at any meetings in which Mr. Shevack acted as an instructor.

Were you?

THE WITNESS: No, your Honor, I was not.

Q Do you know whether or not Shevack acted as an instructor at any meeting?

MR. GOIDEL: Objection, your Honor.

THE COURT: He can answer that yes or no and

then we will inquire and find out what the source of his knowledge is.

MR. GOIDEL: Any source other than his own personal knowledge, your Honor, would be hearsay.

THE COURT: I agree with you.

BY MR. GARMANSKY:

Q You may answer.

THE COURT: He may have had a conversation with Mr. Shevack, that's possible.

Q Your answer, Mr. Lieberman?

A Yes, I know.

Q Would you please tell us what source you have of your knowledge?

A Mr. Mark Laber who was president of the association of Galaxy Distributors --

THE COURT: We can't permit this.

THE WITNESS: I understand that, but can I finish the answer?

THE COURT: All right.

THE WITNESS: He told me that Mr. Shevack had spoken at a training session the previous night. I approached Mr. Shevack and congratulated him because other people had told me he had done a good job and I asked him what portion of the training he

went into and he said he just taught prospecting.

BY MR. GARMANSKY:

Q Now, Mr. Lieberman, did you discuss -- Mr. Lieberman, did you at any time have a discussion with Mr. Shevack concerning any instruction he may have given at an association meeting?

A Yes.

Q What did you say to him and what did he say to you?

A Well, a few distributors had come to me and said that they thought he did an excellent job and I went to him and I congratulated him and he said, "Well, I just taught prospecting "and talked about teaching prospecting, I mean, it was a normal type of thing.

I didn't go into any depth on exactly what he said, no. But --

Q Mr. Lieberman, would you please explain what the word "prospecting" means?

MR. GOIDEL: Objection. Unless Mr. Shevack defined it for him, anything he thinks is improper.

THE COURT: That is correct.

MR. GARMANSKY: I will rephrase the question, your Honor.

THE COURT: Try again.

Q Mr. Lieberman, while you were talking with Mr. Shevack, did Mr. Shevack use the owrd "prospecting"?

A Yes, he did.

Q Mr. Lieberman, what is your understanding of that word?

MR. GOIDEL: Objection.

THE COURT: No. I won't allow that. On any previous occasion, were you in contact with Mr. Shevack in which the subject of prospecting came up?

THE WITNESS: Oh, yes, your Honor.

THE COURT: And give me a time and a place.

THE WITNESS: Well, the first time it came up was in Koscot in 1970. Then subsequent to that, many times in discussions relating to his prospecting methods.

THE COURT: How did it come up in connection with the Koscot incident you mentioned, or episode or whatever it may have been?

THE WITNESS: Well, Mr. Shevack -- I don't know how to go into this without going into a whole long -- but Mr. Shevack and his brother owned a distributorship as I had testified, in Koscot. They were relatively successful in bringing prospective investors to the Koscot meetings, and his methods

were obviously successful and being that I was associated with him not only in the same position, we were both assistant state directors, he of Brooklyn and I of Manhattan, but at other times we discussed his methods of getting these people down to the meetings in such volume.

I had -- then when I had approached Mr. Shevack, ofr it was I that sponsored him into Galaxy, when I approached him sometime after he came into Galaxy, I had spoken to him many times and asked him if he was going to use the same methods of prospecting to try to bring people into Galaxy and he said, it mightn't be effective inthe same way as it was a different product, etc..

But we had spoken many times about his methods that he used. We thought he was very effective.

THE COURT: Go ahead.

BY MR. GARMANSKY:

Q Mr. Lieberman, what methods of prospecting did you discuss with Mr. Shevack?

A Well, particularly cold canvassing, what we used to call cold canvassing, which is approaching strangers about the business --

MR. GOIDEL: May I ask that a time and place

be fixed for each conversation now that will be referred to.

THE COURT: Can you fix a time and a place?

MR. GARMANSKY: May we find out, your Honor, how many conversations the witness had with the defendant Shevack concerning prospecting?

THE WITNESS: I couldn't give you a number.

BY MR. GARMANSKY:

Q Was it more than ten, Mr. Lieberman?

A I would say probably between five and ten.

MR. GOIDEL: May we have the time fixed for those five or ten, as closely as possible.

Q Can you give us a time period for these conversations, Mr. Lieberman, concerning prospecting discussed with Mr. Shevack?

A Somewhere in -- I would have to think around early 1971. Now, we are talking about January and February when he was in Koscot, or February, March, early 1971.

Those were the first conversations I had with him when I first met him. Then I would say that there were no more conversations about that until after he came into Galaxy. And then we renewed our discussions on different occasions.

MR. GOIDEL: Your Honor, as relates to those

other occasions may we have the witness fix a time and place.

THE COURT: The later ones you are speaking of, in Galaxy?

MR. GOIDEL: Yes, sir.

THE COURT: All right.

Can you do your best to fix a time period?

THE WITNESS: I can try. I believe it was in the summer of '72.

Q That is your best recollection, Mr. Lieberman?

A That is correct.

Q Now, Mr. Lieberman, concerning these conversations with Arthur Shevack concerning prospecting, do you have an independent recollection of each particular conversation?

A No.

Q Do you have a recollection, though, of the substance of these conversations?

A Yes.

Q Would you please tell us what was discussed with Mr. Shevack about prospecting in these conversations?

MR. GOIDEL: Objection to the form.

If he wishes to take each conversation separately, I have no objection as long as he identifies

the conversation. Take them one at a time.

MR. GARMANSKY: Your Honor, I've asked the witness if he has an independent recollection of what was said at each conversation; he answered no.

I then asked him: Do you have a recollection of the substance of all conversations? He answered yes. Therefore, I've exhausted his recollection as to each, but he has a recollection as to the substance of all, which he may testify to.

He set up the time period, though he doesn't recall each particular conversation.

MR. GOIDEL: Your Honor, if I may be heard. My understanding of the rules of evidence are that a witness may repeat conversations, what A said to B and what B said to A.

That that is the proper form in which to ask a question. To ask this gentleman to do less than that is to allow him to interpret and to piece together parts from various conversations which may or may not depict accurately what was said on any particular occasion.

As a matter of fact, it might be misleading to take various parts of various conversations and say that putting them together they mean X, Y or Z.

MR. GARMANSKY: Your Honor, the witness is not taking various parts of conversations --

THE COURT: You don't know that.

MR. GARMANSKY: I'm trying to explain, your Honor, the topic is prospecting, that he had conversations about prospecting with Arthur Shevack at different intervals of time. He cannot testify, your Honor --

THE COURT: Let's first see how many conversations after Shevack had joined Galaxy that the witness had on the subject of prospecting, as you call it.

Can you give your best recollection of how many there were?

You said five to ten over all.

THE WITNESS: Most of them were before he joined Galaxy, though , your Honor.

THE COURT: Most of them before he joined Galaxy.

THE WITNESS: That's correct.

I would say maybe perhaps one or two, and they were much briefer than our previous conversations.

THE COURT: That helps. Those are the ones that you previously indicated occurred in the summer of 1972.

THE WITNESS: That is correct.

THE COURT: All right. One or two. Now, you say you have no recollection of a particular conversation, but you recall the substance of each conversation?

THE WITNESS: I recall the substance of the total amount of conversations, but I couldn't pick out, as Mr. Goidel pointed out, I couldn't pick out --

THE COURT: Are you saying -- when you say the total conversations, however, they stretch back over quite a period of time, I suppose, at least a year or more.

MR. GARMANSKY: May we ask the witness whether or not he has an independent recollection of the conversations in Galaxy and the conversations in Koscot?

THE COURT: That's what I was trying to determine. He seemed to say he had only a recollection of a total conversation.

THE WITNESS: Your Honor, if I may clarify this point, I don't remember the total amount of the conversation, at any rate, because it wasn't only prospecting that was discussed.

THE COURT: I'm assuming that. We are talking about a subject.

THE WITNESS: But on the subject of prospecting, I could not state that in, for instance, in the summer of '72 -- it sounds like a book -- in the summer of '72 that Mr. Shevack said something to me regarding one particular portion of prospecting that he had not said two years before.

I don't know where everything came. All I know is that prospecting was discussed a few times and I can tell you what was discussed. but I could not specify as to when that particular conversation came out.

I think -- I don't know whether it was in '71 or '70 or '72.

THE COURT: Let me ask you this: When did you first hear the term prospecting used?

THE WITNESS: In January of 1970.

THE COURT: That was in connection with your activities in the Koscot organization?

THE WITNESS: That's correct, your Honor.

THE COURT: From whom did you hear it?

THE WITNESS: From instructors in Koscot .

THE COURT: I see.

That was a term of art used to describe some operation?

THE WITNESS: Yes, your Honor. If you will allow me, the definition, as I understand it, of prospecting is the recruitment of individuals to a presentation of the facts of any -- or to a sales meeting of any ty. e.

That's the way I understand prospecting. Finding prospects, sales prospects.

BY MR. GARMANSKY:

Q Continue, please.

A There are many methods available. I don't know which ones I discussed at which times with Mr. Shevack; that's the situation here.

THE COURT: We have passed the time I agreed we were going to suspend.

I think we will adjourn now until tomorrow morning at 10:00 o'clock.

MR. GARMANSKY: May we finish this one question, your Honor?

THE COURT: Is this all that is left?

MR. GARMANSKY: No, but do you wish to leav the record in --

THE COURT: A lot has been added since we first heard the word "prospecting". I am not exactly sure of what is left.

MR. GARMANSKY: We will take it up tomorrow morning, Your Honor.

(Court adjourned to October 2, 1974, at 10:00 o'clock. a.m.)

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ARTHUR LIEBERMAN	352			

E X H I B I T S

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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SECURITIES EXCHANGE COMMISSION, :

Plaintiff, : 73-C-1742

-against- :

GALAXY FOODS, et al., :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 2, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

ALLAN LERNER, ESQ.
HARRY GARMANSKY, ESQ.
REGINA MYSLIWIEC, ESQ.
JULIA WILLIAMS, ESQ.
Attorneys for SEC

ALVIN GOIDEL, ESQ.
Attorney for Defendants Arthur Shebach and Irwin Kirschenblatt

GEORGE PADILLA
Pro Se

THE COURT: You may resume the stand, Mr. Lieberman.

A R T H U R L I E B E R M A N, called as a witness, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE COURT: You may proceed, Mr. Garmansky.

MR. GARMANSKY: Your Honor, the record was left yesterday with the objection by Mr. Goidel concerning the conversations the witness had with the defendant Shevack on prospecting.

I believe that your Honor hadn't yet ruled on that objection.

THE COURT: I thought that I had ruled, but at least I am now making clear that to the extent that this witness has a recollection of a conversation with Mr. Shevack about the subject "prospecting," I'll take that testimony for what it is worth.

MR. GARMANSKY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GARMANSKY (Cont'd):

Q Mr. Lieberman, I will state the question again for you:

What were your instructions with Mr. Shevack concerning prospecting, what did he say to you and what did you say to him?

A Well, we talked about methods only, the various different ways that there are of bringing people down to meetings. I couldn't quote anything from those conversations directly.

Q In substance, Mr. Lieberman --

MR. GOIDEL: May we at least know whether he's now referring to the so-called two conversations that he had subsequent to the formation of Galaxy, or whether he's also incorporating what supposedly was said prior to the formation of Galaxy.

THE COURT: Can you endeavor to --

THE WITNESS: I can't make the distinction, your Honor.

THE COURT: You can't make the distinction?

THE WITNESS: I cannot.

THE COURT: That presents a hurdle. We can't be sure whether the testimony relates to his Koscot activities, as I understand the import of what the witness is saying.

MR. GARMANSKY: Your Honor, I don't think it is a question of activities. I believe that the --

THE COURT: It is a question of definition, I understand that.

MR. GARMANSKY: It is also background information about the defendant Shevack.

THE COURT: There is in evidence testimony that Mr. Shevack told this witness, as I understand it, that he taught prospecting, and I quote that, at an association meeting, and that the word was Shevack's own word.

We have had a lot of history here about the use of prospecting in terms of the Roscot era, and it seems to me that we have gone about as far as we can in prospecting prospecting.

MR. GARMANSKY: If I may make a point, I believe that the witness should be allowed to testify, and you, your Honor, trying facts, should give it the appropriate probative value. I believe that the testimony is crucial to the intent of the defendant Shevack, the so-called modus operandi, as to what he about the prospecting and as to his methods of prospecting.

THE COURT: There has been testimony already --

MR. GARMANSKY: Not on the method, your Honor, just that there were discussions on prospecting.

There has been no testimony --

THE COURT: Well, cold canvassing was one method, I understood, that's in here. Is there something in addition to cold canvassing?

THE WITNESS: There was --

THE COURT: Which I understood to refer to approaching strangers.

THE WITNESS: Cold canvassing is basically that. There was his form of advertising, which we went into, which was newspaper-type of advertising for individuals.

Basically on the way he approached people, what he said when he came up to them. That's the only thing we discussed pertinent to cold canvassing that I can remember.

THE COURT: I will permit you to testify what you said he said was a method, or what you call a method; you may testify to that if you have anything specific to offer.

THE WITNESS: Basically, it was just that he was very forthright when he approached people, very friendly, very open with people and that is apparently what he told me he taught to the distributors association that we discussed earlier, to not be afraid;

the worse that people could do would be to turn away, say they weren't interested or something like that. That's basically what he taught. That's basically what we discussed, your Honor.

Beyond that I wouldn't venture because I might be mixing up conversations and I wouldn't want to do that.

BY MR. GARMANSKY:

Q Mr. Lieberman, did you have any discussions with Mr. Shevack after his -- after Shevack gave this instructions to the association meeting on prospecting, did you have any discussions with him concerning bank loans?

A No.

Q Did you have any discussions with Mr. Shevack at any time concerning bank loans?

A I cannot recall any discussions mentioning bank loans.

Q Mr. Lieberman, could you describe the format of these training sessions run by Galaxy?

A Well, as I said yesterday, it was mandatory that everybody coming into Galaxy took training. Training was conducted generally between one and four times a month, depending on how many new people had come in.

The training sessions were generally held at

the offices of Galaxy and/or rented halls, as I testified to yesterday.

We went into many varied topics starting with attitude, purpose in life, goals, setting goas, time organization, prospecting, closing and getting the check.

Q Now, Mr. Lieberman, prior to the setting up of these training sessions, did the executive board hold any discussions about training sessions?

A Yes, they did.

Q Who was present?

MR. GOIDEL: Objection, unless it is established when.

Q All right.

A We are talking about September-October, 1971, right at the beginning because we held training, I believe, beginning late October, 1971.

Q This is an executive board meeting?

A Right.

Q Was Mr. Kirsch present?

A Yes.

Q Will you tell us what was discussed at the executive board meeting?

A How often the training sessions would be held, whether or not to make it mandatory came a bit later, I believe,

in '72. We made a rule and regulation making it mandatory to take the training sessions.

How often to hold them, who would instruct at them, and that's about it.

Q In other words, it was the decision of the executive board to set up these training sessions?

MR. GOIDEL: Objection, unless he establishes that there was a vote taken.

THE COURT: Wait a minute now, hold it about a vote taken. Let me hear the question.

(Question read.)

THE COURT: Let me ask you this:

When you say it was the decision, who were the decision-makers?

THE WITNESS: Well, your Honor, in this particular instance, it was only discussed as to when, where, how and why -- not what and not whether. That had already been decided.

Let me explain, the content of the training sessions I had already outlined and that was not up for discussion.

Whether or not we were going to hold taining sessions was not decided at that time either because the board of directors of the company had made the

decision that there definitely would be training sessions.

The content of what was discussed at training was not to my knowledge brought up at the executive board meeting.

The necessity was explained and debated, I don't think there were too may dissenting votes as to the necessity of it. Where was discussed, how often, who would teach was discussed. But other than that the decision to go ahead with the school was already made and the content of the school was -- that decision had already been made.

THE COURT: So what was really discussed, one may say, was confirmation by those present that it would be a good iead --

THE COURT: And the logistics.

THE COURT: -- and the implementing details.

THE WITNESS: That's correct.

BY MR. GARMANSKY:

Q Mr. Lieberman, at the executive board meeting just testified to, was the purpose or function of this training school discussed?

A Of course.

Q Please tell us what was discussed?

A Well, the purpose of the training school was

discussed and we felt it was necessary that everybody who come into the business get the training so they could operate their franchise.

Q Now, would it be fair to say at these training schools or sessions that were set up by Galaxy there were two parts, the wholesale and retail?

A Of each training session?

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(Continued on next page.)